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Filing date: **09/17/2019**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91246895
Party	Defendant Avra Hospitality LLC
Correspondence Address	MARCY L SPERRY SPERRY IP LAW LLC DBA VIVID IP 3 ALLIANCE CENTER, 3550 LENOX ROAD NE 21ST FLOOR ATLANTA, GA 30326 UNITED STATES docketing@vividip.com, john@vividip.com 404-474-1600
Submission	Motion to Compel Discovery or Disclosure
Filer's Name	Marcy L. Sperry
Filer's email	docketing@vividip.com, john@vividip.com
Signature	/Marcy L. Sperry/
Date	09/17/2019
Attachments	Applicant Motion to Compel Opposer Discovery Responses w. Exhibits A - N TO FILE.pdf(2466929 bytes ) Applicant Motion to Compel Opposer Discovery Responses w. Exhibits O - R TO FILE.pdf(4875447 bytes ) Applicant Motion to Compel Opposer Discovery Responses w. Exhibit S TO FILE.pdf(4610364 bytes ) Applicant Motion to Compel Opposer Discovery Responses w. Exhibits T - V TO FILE.pdf(2714291 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

**48<sup>TH</sup> RESTAURANT ASSOCIATES LLC,**

Opposer,

v.

**AVRA HOSPITALITY LLC,**

Applicant.

**Opposition No. 91246895**

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**APPLICANT AVRA HOSPITALITY LLC'S  
MOTION TO COMPEL OPPOSER'S DISCOVERY RESPONSES**

Pursuant to TBMP §523 and 37 C.F.R. §2.120(e), Applicant Avra Hospitality LLC (“Applicant”) files this motion (“Motion”) to compel Opposer 48<sup>th</sup> Restaurant Associates LLC (“Opposer”) to comply with its discovery obligations in this opposition (“Opposition”). In support of this Motion, Applicant states as follows:

**FACTUAL BACKGROUND**

1. On June 14, 2019, Opposer served on Applicant its First Set of Requests for the Production of Documents (“Opposer’s Document Requests”) and First Set of Interrogatories (collectively “Opposer’s Discovery Requests”). *See Exhibit A.* Applicant’s deadline for responding to Opposer’s Discovery Requests was on July 14, 2019.

2. On June 17, 2019, Applicant served on Opposer its First Set of Requests for the Production of Documents (Applicant’s Document Requests”) and First Set of Interrogatories (collectively “Applicant’s Discovery Requests”). *See Exhibit B.* Opposer’s deadline for responding to Applicant’s Discovery Requests was on July 17, 2019.

3. On July 10, 2019, the parties agreed to a two (2) week extension, where Applicant's new deadline to respond to Opposer's Discovery Requests was July 28, 2019 and Opposer's new deadline to respond to Applicant's Discovery Requests was July 31, 2019. *See Exhibit C.* Since Applicant's new deadline fell on a Sunday, Opposer agreed that Applicant could serve its responses to Opposer's Discovery Requests the next business day, on Monday, July 29, 2019. *See Exhibit D.*

4. On July 29, 2019, Applicant timely served its responses to Opposer's Discovery Requests, which stated that the Applicant would provide all non-privileged documents responsive to Opposer's Document Requests on August 14, 2019. *See Exhibit E.*

5. On July 29, 2019, two (2) days before Opposer's new deadline to respond to Applicant's Discovery Requests, Opposer alleged that Applicant's First Set of Interrogatories exceeded the interrogatory limit and requested that the Applicant re-serve its First Set of Interrogatories. *See Exhibit F.*

6. In an effort to resolve any discovery issues, Applicant revised its First Set of Interrogatories ("Revised Interrogatories" or "Applicant's Revised Interrogatories") and served them on Opposer on July 31, 2019. *See Exhibit G.* Since Applicant's Revised Interrogatories were fully encompassed within Applicant's First Set of Interrogatories and did not require any additional review by the Opposer, Applicant requested that the Opposer respond to Applicant's Revised Interrogatories by August 7, 2019. *See Exhibit H.*

7. On July 31, 2019, Opposer served its responses to Applicant's Document Requests, but did not produce any documents or specify a date of production pursuant to Federal Rule of Civil Procedure ("FRCP") 34(b)(2)(B). *See Exhibit I.*

8. Opposer failed to serve responses to Applicant's Revised Interrogatories by Applicant's requested deadline. Accordingly, on August 11, 2019, Applicant's counsel sent an email to Opposer's counsel requesting that the Opposer respond to Applicant's Revised Interrogatories by August 14, 2019. *See Exhibit J.*

9. In an effort to resolve this discovery dispute, on August 13, 2019, Applicant's counsel left a voicemail for Opposer's counsel and also sent emails to Opposer's counsel requesting that the Opposer serve its responses to Applicant's Revised Interrogatories and specify a date that it will produce documents responsive to Applicant's Document Requests as required by FRCP 34(b)(2)(B). *See Exhibit K.*

10. On August 13, 2019, Opposer's counsel sent an email indicating that the Opposer would provide responses to Applicant's Revised Interrogatories before August 30, 2019. *See Exhibit L.*

11. On August 14, 2019, Applicant produced documents responsive to Opposer's Document Requests. *See Exhibit M.* On the same day, Opposer's counsel sent an email indicating that the Opposer would produce documents responsive to Applicant's Document Requests on or before August 23, 2019. *See Exhibit N.*

12. On August 16, 2019, two (2) days after receiving Applicant's documents in response to Opposer's Document Requests, Opposer filed a civil action ("Civil Action") in the U.S. District Court for the Southern District of New York ("District Court") against the Applicant for trademark infringement. *See Exhibit O.*

13. On August 22, 2019, Opposer's counsel sent an email to Applicant's counsel requesting that the Applicant consent to a stay of this Opposition. *See Exhibit P.*

14. On August 26, 2019, Applicant's counsel sent an email indicating that the Applicant would consent to stay this Opposition if the Opposer would produce documents responsive to Applicant's Document Requests and provide responses to Applicant's Revised Interrogatories by August 30, 2019. *See Exhibit Q.*

15. On August 28, 2019, Opposer's counsel sent an email to Applicant's counsel stating: "it makes no sense to condition a stay on discovery in the proceeding which is about to be stayed and likely mooted." *See Exhibit R.*

16. On September 3, 2019, Opposer filed a motion to suspend this Opposition. *See Exhibit S.*

17. On September 12, 2019, Applicant filed a Motion to Dismiss the Civil Action for lack of personal jurisdiction and improper venue. *See Exhibit T.*

18. On September 17, 2019, Applicant filed a response to Opposer's motion to suspend this Opposition requesting that the Board defer ruling on Opposer's motion to suspend until after the District Court rules on Applicant's Motion to Dismiss. *See Exhibit U.*

19. To date, Applicant has not received any document production from the Opposer in response to Applicant's Document Requests or any response to Applicant's Revised Interrogatories.

### **ARGUMENT**

"In *inter partes* proceedings before the Board, a motion to compel is available in the event of a failure to provide required disclosures or discovery requested by means of discovery depositions, interrogatories, and requests for production of documents and things." *See TBMP §523.01.* Further, "if any party fails to answer any interrogatory, the party seeking discovery may file a motion with the Board for an order to compel an answer. Similarly, if any party fails to

produce and permit the inspection and copying of any document or thing, the party seeking discovery may file a motion for an order to compel production and an opportunity to inspect and copy.” *See* TBMP §411.01 and 37 CFR §2.120(e).

To date, the Opposer has not produced a single document in response to Applicant’s Document Requests nor has it provided a single response to Applicant’s Revised Interrogatories, both of which are overdue. Opposer’s failure to provide such responses is in direct violation of its obligations under TBMP § 523. Furthermore, pursuant to TBMP § 523.02, Applicant has repeatedly attempted to resolve these discovery issues without interference from the Board. *See Exhibit V*, Declaration of Marcy L. Sperry, Esq. regarding Applicant’s good faith efforts. In particular, Applicant’s counsel called Opposer’s counsel and sent numerous emails requesting that the Opposer comply with its discovery obligations, or at least provide a date that the Applicant could expect to receive such responses. In fact, even after the Opposer filed the Civil Action after it received *all* of Applicant’s discovery responses, Applicant offered to consent to stay this Opposition provided that the Opposer comply with its discovery obligations. Despite Applicant’s good faith efforts, however, Opposer is determined to abuse the discovery process in this Opposition to gain an unfair advantage in the Civil Action and has failed to provide any reasonable justification for ignoring its discovery obligations. In addition, this discovery is critical because the Opposition will likely proceed given Applicant’s pending Motion to Dismiss the Civil Action. Accordingly, Applicant requests that the Board compel the Opposer to comply with its discovery obligations, particularly since Opposer’s counsel committed to producing documents and serving responses by August 23, 2019 and August 30, 2019, respectively. *See Exhibits L and N*.

## **CONCLUSION**

Applicant respectfully requests that the Board issue an Order compelling the Opposer to respond fully and completely to Applicant's Revised Interrogatories and Applicant's Document Requests within fifteen (15) days of the Order.

Applicant further moves this Board for any other relief it deems appropriate.

Dated: September 17, 2019

**Sperry IP Law d/b/a Vivid IP**

**/Marcy L. Sperry/**

Marcy L. Sperry, Esq.  
Georgia Bar No. 455561  
marcy@vividip.com

Alex J. Aron, Esq.  
Georgia Bar No. 162408  
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*Attorneys for Applicant  
Avra Hospitality LLC*

3 Alliance Center  
3550 Lenox Rd. NE  
21<sup>st</sup> Floor  
Atlanta, GA 30326

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of September 2019, APPLICANT AVRA HOSPITALITY LLC'S MOTION TO COMPEL OPPOSER'S DISCOVERY RESPONSES was served upon the Opposer via email as follows:

[wthomashower@pryorcashman.com](mailto:wthomashower@pryorcashman.com),  
[kholder@pryorcashman.com](mailto:kholder@pryorcashman.com),  
[tmdocketing@pryorcashman.com](mailto:tmdocketing@pryorcashman.com)

/Marcy L. Sperry/  
Attorney for Applicant



# EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application

Serial No. 87/849,410

Mark: AVRA HOSPITALITY

Filing Date: March 11, 2019

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48 <sup>TH</sup> RESTAURANT ASSOCIATES LLC,	:	
	:	
Opposer,	:	
	:	Opposition No. 91/246,895
-against-	:	
	:	
AVRA HOSPITALITY LLC,	:	
	:	
Applicant.	:	
-----	X	

**OPPOSER’S FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure (“FRCP”) and 37 C.F.R. § 2.120, 48th Restaurant Associates LLC (“Opposer”), by its attorneys Pryor Cashman LLP, hereby requests that Applicant Avra Hospitality LLC answer the following interrogatories fully and separately, in writing and under oath, and deliver to the offices of Pryor Cashman LLP, 7 Times Square, New York, New York 10036, within thirty (30) days of the date of service hereof.

**DEFINITIONS AND INSTRUCTIONS**

- A. “Opposer” means 48th Restaurant Associates LLC.
- B. “Applicant” means Avra Hospitality LLC, and where applicable, its partners, officers, directors, employees, parties, corporate parents, subsidiaries or affiliates.
- C. “Opposer’s Mark” means the AVRA® mark, as reflected in U.S. Reg. No. 2,493,466.
- D. “Applicant’s Mark” or the “Application” means the AVRA HOSPITALITY mark that is the subject of United States Trademark Application Serial No. 87/849,410.

E. “Applicant’s Services” means the services identified in U.S. Serial No. 87/849,410.

F. “Communication” means the transmittal of information in the form of facts, ideas, inquiries or otherwise.

G. “Documents” includes writings, drawings, graphs, charts, photographs, phonorecords and other electronic or computerized data compilations from which information can be obtained or translated, if necessary, by Applicant through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term. Unless otherwise specified, all requests for documents shall require the production of the original documents.

H. “Things” means all categories of tangible objects not included within the definition of “documents.”

I. “Identify” means, when referring to a person, to give, to the extent known, the person’s full name, present or last known address and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

J. “Identify” means, when referring to documents, to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of document; and (iv) author(s), addressee(s) and recipient(s).

K. “Persons” means any natural person or any business, legal or governmental entity or association.

L. “Concerning” means in whole or in part constituting, containing, referring, embodying, reflecting, describing, analyzing, identifying, stating, dealing with, or in any way pertaining to.

M. The terms “all” and “each” shall be construed as all and each.

N. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

O. The use of the singular form of any word includes the plural and vice versa.

P. Where a claim of privilege is asserted in objecting to these Interrogatories, Applicant shall identify the nature of the privilege (including work product) which is being claimed, and the following information shall be provided in the objection:

- i) the identity of the persons involved in any privileged communications;
- ii) the dates of such communications;
- iii) reasons for such communications;
- iv) the manner of such communications; and
- v) identification of any documents concerning such communication.

Q. In the event that any of these Interrogatories calls for the identification of a document that has been lost or destroyed, or for information contained in such a document, such document is to be identified by stating the following:

- i) the type of document, *e.g.*, letter or memorandum;
- ii) the general subject matter of the document;
- iii) the date of the document;
- iv) the author(s) of the document;

- v) the addressee(s) of the document;
- vi) the recipient(s) of the document;
- vii) where not apparent, the relationship of the author(s), addressee(s) and recipient(s) to each other;
- viii) the custodian(s) of the document or person(s) otherwise responsible for the document's safekeeping, storage, or filing;
- ix) the date the document was lost or destroyed; and
- x) the circumstances surrounding the loss of the document and, if the document was destroyed, the reason for the circumstances surrounding its destruction.

R. These Interrogatories are continuing in character so as to require Applicant to supplement its responses in accordance with FRCP Rule 26(e) within a reasonable time if it obtains or becomes aware of any further information responsive to these Interrogatories. Opposer reserves the right to propound additional interrogatories.

S. In responding to each Interrogatory, Applicant is to review and search all relevant files of appropriate entities and persons.

#### INTERROGATORIES

1. Identify all persons who provided information or documents for responses to these Interrogatories and Opposer's First Request for the Production of Documents.

2. Describe with particularity the nature of Applicant's business.

3. Identify any complaints, petitions, oppositions, objections, cancellations, administrative proceedings, legal opinions, cease and desist letters or civil actions filed, made or prepared by Applicant, or against Applicant, concerning Applicant's Mark.

4. Describe the circumstances surrounding Applicant's creation, consideration, selection, adoption, trademark clearance, intent to use, use of, and trademark application for, Applicant's Mark.

5. Identify all Persons who have knowledge or information concerning the date of first use or intended first use of Applicant's Mark.

6. Identify the Person or Persons who were responsible for Applicant's creation, consideration, selection, trademark clearance, adoption of, and decision to make a trademark application for, Applicant's Mark.

7. Identify each type of service that has been or is currently being rendered or intended to be rendered in connection with Applicant's Mark in the United States, whether by Applicant or by a third party.

8. Identify all Persons who have been, are or are intended to be authorized to use or allowed by Applicant to use Applicant's Mark or any variation thereof in U.S. commerce.

9. Identify the date that each of Applicant's Services were first offered or are intended to be offered for sale in U.S. commerce.

10. Identify all Persons who were responsible for, participated in, or have information concerning informal or formal U.S. market research conducted by Applicant or on Applicant's behalf concerning Applicant's Mark.

11. Identify all Persons who were responsible for, participated in, or have information concerning informal or formal U.S. market research conducted by Applicant or on Applicant's behalf concerning Opposer's Mark or Opposer.

12. Identify all of Applicant's principals, directors and managers, including their names, addresses, positions and titles with the company.

13. Identify Applicant's corporate structure including any of Applicant's parents, subsidiaries and affiliates.

14. Identify all designations and marks other than Applicant's Mark considered by Applicant for use in connection with the services identified in the Application.

15. Identify the Person or Persons responsible for the marketing and/or promotion of goods or services under Applicant's Mark and indicate the time period(s) during which each person was so responsible.

16. Identify all advertising agencies, public relations agencies, and market research agencies, other than Applicant, who participated with, or cooperated with, advertising, marketing, or promoting the goods and/or services associated with Applicant's Mark, and indicate the time period(s) during which such activities were conducted.

17. Identify Applicant's yearly U.S. expenditures to date in total for the advertising and promotion of goods and/or services offered in connection with Applicant's Mark.

18. Identify all U.S. states in which Applicant offers, has offered, or intends to offer goods and/or services under Applicant's Mark.

19. Identify all channels of distribution in the United States through which Applicant offers or intends to offer for sale goods and/or services under Applicant's Mark.

20. Identify the media in which Applicant has advertised or promoted, or currently advertises or promotes or intends to advertise or promote goods and/or services under Applicant's Mark in the United States, including without limitation, media schedules and budgets.

21. Describe with particularity any business plans or projections, revenue projections, cost projections and/or product plans or proposals as they relate to Applicant's Services and/or the intended use of Applicant's Mark.

22. Identify all Persons that assisted, or consulted with, Applicant in advertising, promoting and/or offering goods or services under Applicant's Mark in the United States.

23. Identify all customers, whether prospective or actual, to whom Applicant has or intends to market, advertise, promote and/or provide goods or services under Applicant's Mark in the United States, including without limitation, mailing lists, customer profiles, and demographics.

24. Identify all agreements between Applicant and any other person or entity concerning Applicant's Mark.

25. Identify all assignments, licenses or other transfers to or from Applicant of any right concerning Applicant's Mark.

26. Identify when Applicant first became aware of Opposer's Mark and describe the circumstances, including all persons who were involved.

27. Identify any of Applicant's agents, employees, and/or principals who have visited or entered any of Opposer's restaurant locations.

28. Identify all persons who have inquired about, commented upon or referred to Opposer or Opposer's goods and/or services to Applicant in any way.

29. Identify all instances of actual or apparent confusion or any inquiry known to Applicant as to the source, sponsorship, authorization or approval of any goods and/or services offered in connection with Applicant's Mark, or referring to Opposer or Opposer's Mark or Opposer's business.

30. Identify all persons who have knowledge, information, or had email or other communications concerning any instance or purported instance when any person or entity has made inquiry or has been confused, mistaken or deceived as between the identity of Applicant and the identity of Opposer, including any of their respective subsidiaries, affiliates or divisions, their



goods or services or the reverse of such inquiry, confusion, mistake or deception, including same occurring in any correspondence, transaction, proposed transaction, news story, article or otherwise.

31. Identify all persons who have knowledge, information, or had email or other communications concerning telephone calls or correspondence received by Applicant from any other person seeking to reach Opposer.

32. Identify all persons who have knowledge, information, or had email or other communications, concerning how and when Applicant learned of Opposer.

33. Identify all persons who have knowledge, information, or had email or other communications concerning Applicant's contentions in prior correspondence or in this or any other proceedings or litigation that the Applicant's Marks are not likely to be confused with or associated with Opposer or its marks.

Dated: New York, New York  
June 14, 2019

Respectfully submitted,

**PRYOR CASHMAN LLP**

/William Thomashower/  
William Thomashower  
Ryan S. Klarberg  
Kamilah Holder  
7 Times Square  
New York, New York 10036  
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[kholder@pryorcashman.com](mailto:kholder@pryorcashman.com)  
[tmcketing@pryorcashman.com](mailto:tmcketing@pryorcashman.com)

*Attorneys for Opposer,*  
*48TH RESTAURANT ASSOCIATES LLC*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application  
Serial No. 87/849,410  
Mark: AVRA HOSPITALITY  
Filing Date: March 11, 2019

48 <sup>TH</sup> RESTAURANT ASSOCIATES LLC,	-----X	
	:	
	:	
Opposer,	:	
	:	
-against-	:	Opposition No. 91/246,895
	:	
AVRA HOSPITALITY LLC,	:	
	:	
Applicant.	:	
	-----X	

**CERTIFICATE OF SERVICE**

I hereby certify that on June 14, 2019 a true and correct copy of Opposer's First Set of Interrogatories has been served on Applicant's attorney of record by e-mail to the following addresses:

Marcy L Sperry, Esq.  
Sperry IP Law LLC dba Vivid IP  
3 Alliance Center  
3550 Lenox Rd NE  
21st Floor  
Atlanta, GA, 30326  
[marcy@vividip.com](mailto:marcy@vividip.com)  
[docketing@vividip.com](mailto:docketing@vividip.com)  
[john@vividip.com](mailto:john@vividip.com)

\_\_\_\_\_  
/ryan s. klarberg/  
Ryan S. Klarberg

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application

Serial No. 87/849,410

Mark: AVRA HOSPITALITY

Filing Date: March 11, 2019

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48 <sup>TH</sup> RESTAURANT ASSOCIATES LLC,	:	
	:	
Opposer,	:	
	:	
-against-	:	Opposition No. 91/246,895
	:	
AVRA HOSPITALITY LLC,	:	
	:	
Applicant.	:	
-----	X	

**OPPOSER’S FIRST REQUEST  
FOR THE PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure (“FRCP”) and 37 C.F.R. § 2.120, 48th Restaurant Associates LLC (“Opposer”), by its attorneys Pryor Cashman LLP, hereby requests that Applicant Avra Hospitality LLC produce the documents and things described below at the offices of Pryor Cashman LLP, 7 Times Square, New York, New York 10036, within thirty (30) days of the date of service hereof.

**DEFINITIONS AND INSTRUCTIONS**

- A. “Opposer” means 48th Restaurant Associates LLC.
- B. “Applicant” means Avra Hospitality LLC, and where applicable, its partners, officers, directors, employees, parties, corporate parents, subsidiaries or affiliates.
- C. “Opposer’s Mark” means the AVRA® mark, as reflected in U.S. Reg. No. 2,493,466.

D. “Applicant’s Mark” or the “Application” means the AVRA HOSPITALITY mark that is the subject of United States Trademark Application Serial No. 87/849,410.

E. “Applicant’s Services” means the services identified in U.S. Serial No. 87/849,410.

F. “Communication” means the transmittal of information in the form of facts, ideas, inquiries or otherwise.

G. “Documents” includes writings, drawings, graphs, charts, photographs, phonorecords and other electronic or computerized data compilations from which information can be obtained or translated, if necessary, by Applicant through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term. Unless otherwise specified, all requests for documents shall require the production of the original documents.

H. “Things” means all categories of tangible objects not included within the definition of “documents.”

I. “Identify” means, when referring to a person, to give, to the extent known, the person’s full name, present or last known address and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

J. “Identify” means, when referring to documents, to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of document; and (iv) author(s), addressee(s) and recipient(s).

K. “Persons” means any natural person or any business, legal or governmental entity or association.

L. “Concerning” means in whole or in part constituting, containing, referring, embodying, reflecting, describing, analyzing, identifying, stating, dealing with, or in any way pertaining to.

M. The terms “all” and “each” shall be construed as all and each.

N. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

O. The use of the singular form of any word includes the plural and vice versa.

P. Where a claim of privilege is asserted in objecting to these requests, Applicant shall identify the nature of the privilege (including work product) which is being claimed, and the following information shall be provided in the objection:

- i) the type of document, *e.g.*, letter or memorandum;
- ii) the general subject matter of the document;
- iii) the date of the document;
- iv) the author(s) of the document;
- v) the addressee(s) of the document;
- vi) the recipient(s) of the document; and
- vii) where not apparent, the relationship of the author(s), addressee(s) and recipient(s) to each other.

Q. If Applicant objects to the scope or breadth of any of these requests for documents or things, Applicant should identify, to the extent possible, those documents or things that Applicant will produce notwithstanding its objection.

R. In the event that any of these requests calls for a document that has been lost or destroyed, or for information contained in such a document, such document is to be identified by stating the following:

- i) the type of document, *e.g.*, letter or memorandum;
- ii) the general subject matter of the document;
- iii) the date of the document;
- iv) the author(s) of the document;
- v) the addressee(s) of the document;
- vi) the recipient(s) of the document;
- vii) where not apparent, the relationship of the author(s), addressee(s) and recipient(s) to each other;
- viii) the custodian(s) of the document or person(s) otherwise responsible for the document's safekeeping, storage, or filing;
- ix) the date the document was lost or destroyed; and
- x) the circumstances surrounding the loss of the document and, if the document was destroyed, the reason for the circumstances surrounding its destruction.

S. These requests are continuing in character so as to require Applicant to supplement its responses in accordance with FRCP Rule 26(e) within a reasonable time if it obtains or becomes aware of any further information or documents responsive to these requests for documents and things. Opposer reserves the right to propound additional requests.

T. In responding to each request, Applicant is to review and search all relevant files of appropriate entities and persons.

U. As required by FRCP Rule 34(a), Applicant must produce all documents requested either as they are kept in the ordinary course of business or segregated according to each request.

#### REQUESTS FOR PRODUCTION

1. All documents and things identified, referred to, or used as a basis to respond in Applicant's responses to Opposer's First Set of Interrogatories.

2. All documents and things concerning Applicant's creation, consideration, selection, trademark clearance, adoption, acquisition and first use of Applicant's Mark in the United States, including, without limitation, the meaning, design, and commercial impression of Applicant's Mark, any trademark search reports, opinions of counsel regarding proposed marks, any state or federal application to register a trademark or any trademark registration actually obtained, any responses thereto from the United States Patent and Trademark Office or other responsible authority or agency, and any written communications related thereto.

3. All documents and things concerning designations other than Applicant's Mark considered by Applicant to be used in connection with the goods or services identified in the Application.

4. All documents and things concerning any change or modification of Applicant's Mark since the conception of Applicant's Mark.

5. All documents and things concerning any complaints, petitions, oppositions, objections, cancellations, administrative proceedings, legal opinions, cease and desist letters or civil actions made by or against Applicant involving Applicant's Mark.

6. All documents and things concerning any communications between Applicant (including without limitation, through an attorney) and the Patent and Trademark Office and/or the Trademark Trial and Appeal Board concerning Applicant's Mark.

7. Documents sufficient to show the corporate structure, organization and operation of Applicant and any of Applicant's companies or affiliates that have been, are and/or will be offering goods or services in connection with Applicant's Mark, including, without limitation, documents identifying all related or affiliated companies, corporate officers and members of the board of directors, executive committees or governance bodies.

8. Documents sufficient to identify goods or services which have been or are currently offered for sale, sold, advertised or promoted bearing or offered in connection with Applicant's Mark in the United States.

9. Documents sufficient to identify goods or services that Applicant intends will be offered for sale, sold, advertised or promoted by Applicant under Applicant's Mark in the United States.

10. Documents reflecting use in commerce by Applicant of each good or service identified in the Application.

11. All documents and things concerning the past, present, or future, intended advertising or promotion of Applicant's Services in the United States, including without limitation, advertisements, promotional materials, sales materials, videotapes, DVDs, social media, websites, catalogues, brochures, and mailing and price lists, whether distributed publicly or not, to the extent they exist.

12. All documents and things reflecting Applicant's annual actual and/or intended advertising, promotion and publicity expenditures in total for Applicant's Services.

13. Documents sufficient to show each kind of activity and the total annual sales and/or revenue, and profit for each good or service sold or provided by Applicant under Applicant's mark.



14. Documents sufficient to show Applicant's corporate structure including any of Applicant's parents, subsidiaries and affiliates.

15. All documents and things concerning the media in which Applicant advertises or promotes, or intends to advertise or promote, goods or services offered in connection with Applicant's Mark in the United States, including without limitation, media schedules and budgets.

16. All documents and things concerning Applicant's yearly expenditures to date and planned future expenditures relating to the sale of Applicant's Services.

17. All documents and things concerning any business plans or projections, revenue projections, cost projections and/or product plans or proposals as they relate to Applicant's Services and/or the use of Applicant's Mark.

18. All documents and things concerning the date each of the goods or services identified in the Application were first sold in interstate commerce in the United States under Applicant's Mark, if any.

19. All documents and things concerning the channels of distribution through which Applicant offers, has offered, or will offer goods or services in connection with Applicant's Mark in the United States.

20. All documents and things concerning the U.S. territories in which Applicant offers, has offered, or will offer goods or services in connection with Applicant's Mark.

21. All documents and things concerning any agreements between Applicant and any other person or entity concerning Applicant's Mark.

22. All documents and things concerning any assignment, license or other transfer to or from Applicant of any right, statutory or otherwise, in Applicant's Mark.

23. Documents and things sufficient to identify the targeted consumers, whether prospective or actual, to whom Applicant has or will market, advertise, promote, offer, or sell goods or services in connection with Applicant's Mark in the United States.

24. Documents and things sufficient to identify the target consumer groups to whom Applicant has or will market, advertise, promote, offer, or sell goods or services bearing or offered in connection Applicant's Mark.

25. All documents and things concerning complaints Applicant has received, including without limitation, from consumers and retailers, concerning any goods or services sold in connection with Applicant's Mark in the United States.

26. All documents and things concerning Opposer, Opposer's Mark, and Applicant's awareness of or exposure to Opposer and Opposer's Mark, Opposer's services, and Opposer's places of business, including, without limitation, internet searches, trademark searches, or search reports, purchases, or communications.

27. All documents and things concerning communications between Applicant and any other person in which a person inquired about, commented upon or referred to Opposer or Opposer's goods or services in any way.

28. All documents and things concerning any instances of actual confusion by any person as to the source, sponsorship, authorization or approval of any goods or services offered in connection with Applicant's Mark.

29. All documents concerning Applicant's contentions in prior correspondence or in this or other proceedings or litigation that the Applicant's Mark is not likely to be confused with or associated with Opposer or its marks.

30. All documents not otherwise called for herein which Applicant intends to rely upon as evidence in this proceeding, including without limitation documents concerning the lack of confusion or likelihood thereof between the marks and names of Opposer and those of Applicant.

31. All documents concerning any instance or purported instance when any person or entity has made inquiry or has been confused, mistaken or deceived as between the identity of Applicant and the identity of Opposer, including any of their respective subsidiaries, affiliates or divisions, or the reverse of such inquiry, confusion, mistake or deception, including same occurring in any communication, correspondence, transaction, proposed transaction, news story, article or otherwise.

32. All documents concerning any person's belief of an association in, or of any confusion as to, the relationship between Applicant and Opposer or their goods or services.

33. All documents concerning communications, emails, telephone calls or correspondence received by Applicant from any person, intended for or seeking to reach Opposer.

34. All documents and things concerning informal or formal market research conducted by Applicant or on Applicant's behalf concerning Applicant's Mark, including without limitation, studies, search reports, surveys, and market research tests.

35. All documents and things concerning informal or formal market research conducted by Applicant or on Applicant's behalf concerning Opposer's Mark or any other trademarks held by Opposer, including, without limitation, studies, search reports, surveys and market research tests.

36. All documents and things concerning Applicant's communications concerning Opposer or Opposer's Mark and any actions taken by Applicant relating thereto, including, without

limitation, telephone logs, messages, correspondence, email communications, memoranda and business proposals.

37. All documents referring or relating to plans for steps toward expansion by Applicant of the type of goods or services under which Applicant's Mark is used or relating to plans to alter the present channels of trade, or to offer such goods or services to Persons other than Applicant's present purchasers, if any.

Dated: New York, New York  
June 14, 2019

Respectfully submitted,

**PRYOR CASHMAN LLP**

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Ryan S. Klarberg  
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*Attorneys for Opposer,*  
*48TH RESTAURANT ASSOCIATES LLC*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application  
Serial No. 87/849,410  
Mark: AVRA HOSPITALITY  
Filing Date: March 11, 2019

-----X	X	
48 <sup>TH</sup> RESTAURANT ASSOCIATES LLC,	:	
	:	
Opposer,	:	
	:	
-against-	:	Opposition No. 91/246,895
	:	
AVRA HOSPITALITY LLC,	:	
	:	
Applicant.	:	
-----X	X	

**CERTIFICATE OF SERVICE**

I hereby certify that on June 14, 2019 a true and correct copy of Opposer's First Request for the Production of Documents has been served on Applicant's attorney of record by e-mail to the following addresses:

Marcy L Sperry, Esq.  
Sperry IP Law LLC dba Vivid IP  
3 Alliance Center  
3550 Lenox Rd NE  
21st Floor  
Atlanta, GA, 30326  
[marcy@vividip.com](mailto:marcy@vividip.com)  
[docketing@vividip.com](mailto:docketing@vividip.com)  
[john@vividip.com](mailto:john@vividip.com)

\_\_\_\_\_  
/ryan s. klarberg/  
Ryan S. Klarberg

# **EXHIBIT B**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

**48<sup>TH</sup> RESTAURANT ASSOCIATES LLC,**

Opposer,

v.

**AVRA HOSPITALITY LLC,**

Applicant.

**Opposition No. 91246895**

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**APPLICANT’S FIRST SET OF REQUESTS FOR THE PRODUCTION OF  
DOCUMENTS AND INTERROGATORIES TO OPPOSER**

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. §2.120, Applicant Avra Hospitality LLC (“Applicant”) requests that Opposer 48<sup>th</sup> Restaurant Associates LLC (“Opposer”) answer under oath the following interrogatories and produce the following documents for inspection and copying at the office of Sperry IP Law LLC d/b/a Vivid IP, 3 Alliance Center, 3550 Lenox Road NE, Floor 21, Atlanta, GA, 30326, within 30 days after service hereof.

**DEFINITIONS AND INSTRUCTIONS**

A. The term “Applicant” shall mean Avra Hospitality LLC and all parent, subsidiary, related predecessor and/or successor entities, divisions, employees, agents and/or representatives thereof.

B. The term “Opposer”, “you”, or “your” shall mean Opposer 48<sup>th</sup> Restaurant Associates LLC and all parent, subsidiary, related predecessor and/or successor entities, divisions, employees, agents and/or representatives thereof.

C. The term “AVRA HOSPITALITY & Design Mark” shall mean the mark that is the subject of U.S. Trademark Application No. 87/849,410 for AVRA HOSPITALITY & Design.

D. The term “AVRA Mark” shall mean all trademarks, service marks, trade names, business names, or names containing or comprising the term “Avra” owned by the Opposer, including the mark that is the subject of U.S. Trademark Registration No. 2,493,466.

E. The term “commerce” means commerce subject to regulation by Congress, as defined in 15 U.S.C. §1127.

F. As used herein, the terms “entity” and “person” include natural persons, governmental entities, organizations, corporations, partnerships, associations, joint ventures and any other individual or group of individuals that has the purpose of conducting or, in fact, conducts business.

G. The term “document” shall be given the broadest possible scope under F.R.C.P. 34 and includes, but is not limited to, all writings, correspondence, memoranda, handwritten notes, drafts, invoices, contracts, purchase orders, letters, checks, receipts, books, pamphlets, publications, stickers, posters, catalogs, labels, displays, photographs, slides, videotapes, films, artwork, drawings, sketches, illustrative materials, layouts, tear sheets, magnetic recording tapes, microfilms, computer printouts, e-mail, work sheets, and files from any personal computer, notebook or laptop computer, file server, minicomputer, mainframe computer or any other storage means by which information is retained in retrievable form, including files that are still on any storage media, but that are identified as “erased but recoverable,” and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by a mechanical or electronic process.

H. The term “identify” means: (a) when applied to a person: to give the person’s full name, present or last known address, e-mail address and telephone number, and, when referring to



a natural person, additionally, the present or last known place of employment; (b) when applied to documents: to give the (i) type of document, (ii) general subject matter, (iii) date of the document, and (iv) author(s), addressee(s) and recipient(s); and (c) when applied to facts, to describe fully the (i) occurrence, event, act, omission, or failure to act, (ii) actor or the person who acted or failed to act, (iii) date and time when, and place where, each act or failure to act occurred, and (iv) if the fact is an oral communication, where and when it took place, who was present, and, with as much detail as possible, the substance of what each participant said.

I. The term “concerning” means referring to, relating to, embodying, connected with, commenting on, responding to, showing, describing, analyzing or constituting.

J. The singular and plural forms are used herein interchangeably, as are the masculine and feminine forms and the present and past tenses, and such terms should be construed as necessary to bring within the scope of the interrogatory/document request all documents and information which might otherwise be construed to be outside its scope.

K. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory/document request all documents and information which might otherwise be construed to be outside its scope.

L. If any information or document called for in any interrogatory or request is withheld in whole or in part by reason of a claim of attorney-client privilege or any other claim of immunity from discovery, then, at the time the information or document is to be produced, a list is to be furnished identifying any such information or document withheld together with the following information: date and title of the document; name and job title of each author, writer or sender of the document; name and job title of each recipient, addressee or other person to whom the original or any copy of the document was sent or furnished; if you contend that an author or recipient of

the document is an attorney for purposes of claiming privilege or immunity from discovery, identify the Bar of which he or she was a member at the time of the communication in question; the general subject matter of the information or document withheld; the basis for the claim of privilege or immunity from discovery; and the interrogatory or request to which the information or document is responsive.

M. In the event that any document called for by this request has been destroyed, lost, discarded or otherwise disposed of, identify any such document as completely as possible, including, without limitation, the date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

N. Documents shall be produced as they are kept in the ordinary course of business or shall be organized and labeled to correspond to the document request to which they are responsive.

O. These requests are continuing in nature so as to require prompt supplemental responses if you, or any person acting on your behalf, obtain additional responsive documents or information called for by these discovery requests between the time of the original response and the time set for trial.

P. Where an objection is made to a request or subpart thereof, state all grounds upon which you base your objection.

Q. If there are no documents responsive to any particular category, you shall state so in writing

R. You shall take immediate steps to preserve all documents and information responsive to these discovery requests, including electronic data that may exist on backup and/or archived electronic computerized data compilations. These measures include, but are not limited

to, discontinuation of all data destruction and backup tape recycling policies applicable to such documents.

S. Each request for documents seeks production of the document in its entirety, without abbreviation or expurgation, including all attachments or other matters affixed thereto.

## **INTERROGATORIES**

### **Interrogatory No. 1**

State the date Opposer first selected the AVRA Mark for use or intended use in connection with any goods or services (hereinafter “Goods and Services” or “Opposer’s Goods and Services”) in the United States or in commerce with the United States. Describe in detail the reason(s) for and circumstances of such selection, and identify all persons or entities who participated in or were consulted in such selection, or who participated in the creation, design or adoption of the AVRA Mark, including a description of the nature of their participation or consultation.

### **Interrogatory No. 2**

Identify any searches, opinions, investigations, analyses or studies related to the creation, design, selection, adoption, or clearance of the AVRA Mark, including without limitation the persons involved, the date(s), and the data or results of such searches, opinions, investigations, analyses, or studies.

### **Interrogatory No. 3**

Identify:

(a) each of Opposer’s Goods and Services on or in connection with which Opposer (or any person or entity authorized by Opposer) has used or is using the AVRA Mark in the United States or in commerce with the United States;

- (b) the date of first use of the AVRA Mark;
- (c) the date of first use in commerce of the AVRA MARK;
- (d) the period of time during which Opposer's Goods and Services were or are being offered for sale, sold, and/or distributed in connection with the AVRA Mark;
- (e) the geographic area(s) in which Opposer's Goods and Services were or are being offered for sale, sold, and/or distributed in connection with the AVRA Mark;
- (f) the annual volume of sales for each year to the present, by dollar amount and/or unit amount, for Opposer's Goods and Services offered for sale, sold, and/or distributed in connection with the AVRA Mark;
- (g) any revenues, including but not limited to any licensing revenues that Opposer has received in connection with the sale and distribution of the Opposer's Goods and Services under the AVRA Mark;
- (h) the channels of trade (e.g., types of stores, catalogs, mail order, Internet, promotional sales, private sales, etc.) through which Opposer's Goods and Services were or are being distributed or sold to the ultimate purchaser, consumer, or user in connection with the AVRA Mark;
- (i) the type of customers to which such Opposer's Goods and Services are, were, or are intended to be marketed in connection with the AVRA Mark; and
- (j) all third party media references to Opposer's Goods and Services under the AVRA Mark.

**Interrogatory No. 4**

Identify any persons or entities Opposer has authorized, licensed, granted, or otherwise conveyed the right to use Opposer's AVRA Mark, or to sell Opposer's Goods and Services in the United States or in commerce within the United States. For each such person or entity, identify:

- (a) the date when such right was authorized, licensed, granted, or otherwise conveyed;
  - (b) whether such authorization, license, grant, or conveyance was in writing or oral;
- and
- (c) the material terms under which such authorization, license, grant, or conveyance were made, including but not limited to the financial terms governing such transaction.

**Interrogatory No. 5**

Identify any claims, conflicts, objections, cease and desist demands, trademark opposition and/or cancellation proceedings, other *inter partes* proceedings and litigations in which Opposer has been involved concerning the AVRA Mark, including but not limited to the parties involved, the court or other tribunal of such action or proceeding, and the current status and/or final outcome of such matter.

**Interrogatory No. 6**

Separately for each year in which advertising, marketing, or promotion of Opposer's AVRA Mark has occurred, state the annual expenditures for such advertising, marketing, or promotion for the AVRA Mark.

**Interrogatory No. 7**

Specify the approximate gross revenue including, but not limited to, projected revenue generated by sales of Opposer's Goods and Services under the AVRA Mark for each year since such sales began to the present.

**Interrogatory No. 8**

Identify the persons who are most knowledgeable about the advertising, promotion, use, and/or intended use of the Opposer's AVRA Mark in the United States.

**Interrogatory No. 9**

Identify the persons who are most knowledgeable concerning any alleged fame and public recognition of Opposer's AVRA Mark, including but not limited to third party media references concerning Opposer's AVRA Mark.

**Interrogatory No. 10**

Identify with specificity how the Opposer advertises and markets its Goods and Services under the AVRA Mark for each year since such advertising began to the present, including: (a) the nature of all marketing activities in the United States (including advertisements, promotions, articles, press releases whether in print, transmitted by radio, television, wireless format, digital, and Internet) for the Goods and Services offered under the AVRA Mark for each year since such advertising began to the present; (b) when, for how long, and where such marketing activity occurred; and (c) identify the names of all media, advertising, promotion or public relations agencies involved in such marketing activity and the names of the principal contact at each agency for the marketing activity.

**Interrogatory No. 11**

Identify each person who has ever been responsible for bookkeeping or accounting with respect to Opposer's Goods and Services offered or sold under the AVRA Mark.

**Interrogatory No. 12**

Identify every publication in which Opposer has advertised or intends to advertise its Goods and Services under the AVRA Mark.

**Interrogatory No. 13**

Identify every instance in which Opposer's AVRA Mark has appeared in any publication not published by Opposer and for each instance, state the name of the publication, the date of publication, and the volume and/or issue number of the publication.

**Interrogatory No. 14**

If Opposer has obtained any opinions regarding any of the issues in this action, identify the person who provided each opinion, provide the date Opposer received each opinion, state whether the opinion was delivered orally or in writing, state the general topic of the opinion, and identify any documents concerning each such opinion.

**Interrogatory No. 15**

Specify the retail price of each of Opposer's Good and Service offered under the AVRA Mark for each year since sales began to the present.

**Interrogatory No. 16**

Identify each person with knowledge of the facts or statements set forth in Opposer's Notice of Opposition, or with knowledge of any facts pertinent to this action and state the facts or subject matter of each such person's knowledge.

**Interrogatory No. 17**

Identify all facts to support Opposer's contention that "Opposer has received widespread unsolicited media attention for its restaurants, which have been featured in prominent magazines, newspapers, media and electronic publications" as stated in paragraph 2 of Opposer's Notice of Opposition.

**Interrogatory No. 18**

Identify all facts to support Opposer's contention that Opposer's Goods and Services and Opposer's AVRA Mark "have long been extensively advertised in a wide range of print and electronic media, on the Internet and have been extensively used in interstate commerce over the last 20 years" as stated in paragraph 12 of Opposer's Notice of Opposition.

**Interrogatory No. 19**

Identify all facts to support Opposer's contention that Opposer's AVRA Mark is "famous" within the meaning of Section 43(c) of the Lanham Act, as amended 15 U.S.C. § 1125(c)" as stated in paragraph 18 of Opposer's Notice of Opposition.

**Interrogatory No. 20**

Identify all facts to support Opposer's contention that Applicant's AVRA HOSPITALITY & Design Mark "appears to have been selected and designed in an attempt to trade on Opposer's famous AVRA® Mark, name and goodwill and would constitute infringement and dilution if so used" as stated in paragraph 25 of Opposer's Notice of Opposition.

**Interrogatory No. 21**

Identify all facts to support Opposer's contention that "the relatedness of restaurant services and hotel services is well known, since many hotels operate restaurants of the same name" as stated in paragraph 26 of Opposer's Notice of Opposition.

**Interrogatory No. 22**

Identify all facts to support Opposer's contention that "the parties' services will presumably be encountered by purchasers in the same channels of trade" as stated in paragraph 27 of Opposer's Notice of Opposition.



**Interrogatory No. 23**

Identify all facts to support Opposer's contention that Applicant's use of the AVRA HOSPITALITY & Design Mark is "likely to cause confusion, mistake or deception with consequential injury to Opposer and the public" as stated in paragraph 29 of Opposer's Notice of Opposition.

**Interrogatory No. 24**

Identify all facts to support Opposer's contention that "Opposer's Mark has also been used exclusively by Opposer, whether considered for restaurants and bars or even related classes like hotels, hospitality services, or the like" as stated in paragraph 34 of Opposer's Notice of Opposition.

**Interrogatory No. 25**

Identify all facts to support Opposer's contention that "Applicant's AVRA HOSPITALITY mark is likely to cause dilution by blurring of Opposer's famous, distinctive and federally-registered AVRA® Mark within the meaning of 15 U.S.C. § 1125(c)" as stated in paragraph 36 of Opposer's Notice of Opposition.

**Interrogatory No. 26**

Identify all persons who participated in or provided information used in preparing answers to the above interrogatories, separately identifying such person with respect to each particular interrogatory number.

**DOCUMENT REQUESTS**

**Request No. 1**

Representative samples of each of Opposer's AVRA Mark used in connection with each of Opposer's Goods and Services.

**Request No. 2**

All documents concerning Opposer's conception, selection, creation, design, and adoption of Opposer's AVRA Mark.

**Request No. 3**

All documents concerning any trademark searches, investigations, analyses, studies, or opinion letters conducted or reviewed by or on behalf of Opposer concerning Opposer's AVRA Mark, including but not limited to those conducted or prepared to determine the availability of Opposer's AVRA Mark for adoption, use, and/or registration by Opposer.

**Request No. 4**

Documents sufficient to identify: (a) the date of first use of Opposer's AVRA Mark; (b) the geographic scope (including city and state) of use of Opposer's AVRA Mark; (c) any and all customers, distributors, sellers, or third parties to which Opposer's Goods and Services under the AVRA Mark have been sold; (d) the Goods and Services offered or sold under the AVRA Mark; and (e) the amount of sales (in dollars and units) made under Opposer's AVRA Mark, for each year since inception.

**Request No. 5**

All documents concerning the total annual volume of gross sales, by units and dollars, of Opposer's Goods and Services under Opposer's AVRA Mark in the United States or in commerce with the United States, from the date of first use of Opposer's AVRA Mark to the present.

**Request No. 6**

Documents sufficient to identify the amount of money expended by Opposer in advertising and promoting Opposer's AVRA Mark in the United States or in commerce with the United States for each year from the date of first use to the present.

**Request No. 7**

All documents concerning third parties that are using or have used marks containing Opposer's AVRA Mark, in whole or part.

**Request No. 8**

All documents concerning Opposer's grant of authorization or license to use (or proposed authorization or license to use) Opposer's AVRA Mark in the United States or in commerce with the United States to any third party, including but not limited to all license agreements.

**Request No. 9**

All documents concerning any claims, conflicts, objections, cease and desist or other demands, litigations, trademark oppositions or cancellation proceedings, arbitrations, administrative proceedings or other disputes of any kind in which Opposer has been involved concerning registration or use of Opposer's AVRA Mark.

**Request No. 10**

All documents concerning the enforcement of Opposer's AVRA Mark by Opposer or its licensees.

**Request No. 11**

All documents concerning any market research, focus groups, surveys or other investigation made or commissioned by or on behalf of Opposer concerning Opposer's AVRA Mark.

**Request No. 12**

All documents concerning the actual or intended channels of trade for Opposer's Goods or Services sold or intended to be sold in connection with Opposer's AVRA Mark.

**Request No. 13**

Representative specimens of advertising and promotional materials used by Opposer in connection with Opposer's AVRA Mark.

**Request No. 14**

All documents concerning Applicant and Applicant's AVRA HOSPITALITY & Design Mark, including but not limited to all communications between the parties and all documents concerning Opposer's first knowledge of Applicant's AVRA HOSPITALITY & Design Mark.

**Request No. 15**

All documents concerning any instructions on the manner in which Opposer's AVRA Mark are to be used, including but not limited to any style guides concerning the usage of Opposer's AVRA Mark.

**Request No. 16**

All documents concerning the demographics of the customers for Opposer's Goods and Services.

**Request No. 17**

All documents concerning the advertising, marketing or promotion of Opposer's Goods and Services marketed or sold in connection with Opposer's AVRA Mark in the United States or U.S. commerce, including but not limited to, samples of each advertisement or promotional piece, any media plans, public relations materials, press kits, correspondence with advertising agencies, public relations firms, media planners, graphic designers, website designers or any other such entities in the advertising and promotional field and documents sufficient to show the advertising and promotional channels used by Opposer to advertise or promote Opposer's Goods and Services offered in connection with Opposer's AVRA Mark.

**Request No. 18**

All documents concerning any alleged fame or public recognition of Opposer's AVRA Mark.

**Request No. 19**

All documents concerning the application and registration of Opposer's AVRA Mark.

**Request No. 20**

All documents concerning any agreements to which Opposer is a party concerning the use or registration of Opposer's AVRA Mark, including but not limited to co-existence agreements, license agreements, and settlement agreements.

**Request No. 21**

All documents concerning any plans for business expansion that Opposer has for new products or services or for new markets or channels of trade concerning Opposer's Goods and Services or Opposer's AVRA Mark.

**Request No. 22**

All documents concerning any communications between Opposer and any third party concerning Applicant, Applicant's AVRA HOSPITALITY & Design Mark, or the instant proceedings.

**Request No. 23**

All unsolicited media and third party references concerning Opposer's Goods and Services offered and/or sold in connection with Opposer's AVRA Mark.

**Request No. 24**

All documents identified or otherwise relied on or referred to by Opposer in responding to Opposer's interrogatories above.

**Request No. 25**

All documents concerning any communications between Opposer and any third party, including without limitation licensees, customers, retailers, wholesalers, importers, exporters and distributors, concerning Opposer's AVRA Mark or Opposer's Goods and Services.

**Request No. 26**

Documents sufficient to show Opposer's document retention policies, document destruction policies, document retention practices and document destruction practices.

**Request No. 27**

All documents concerning the specimens of use submitted in connection with each of Opposer's AVRA Mark to the United States Patent and Trademark Office.

**Request No. 28**

All documents concerning marks owned or registered by third parties containing or comprising the term "AVRA" in connection with goods and services identical or related to those the Goods and Services offered by Opposer under Opposer's AVRA Mark.

**Request No. 29**

All documents and things sufficient to fully describe the organization and management structure of Opposer, including but not limited to company organizational charts with lists of parents or subsidiaries, department organizational charts, lists of management members, duties, and responsibilities, and the organizational structure or reporting responsibilities of any or all of Opposer's employees, officers, and agents.

**Request No. 30**

All documents and things to support Opposer's contention that "Opposer has received widespread unsolicited media attention for its restaurants, which have been featured in prominent

magazines, newspapers, media and electronic publications” as stated in paragraph 2 of Opposer’s Notice of Opposition.

**Request No. 31**

All documents and things to support Opposer’s contention that Opposer’s Goods and Services and Opposer’s AVRA Mark “have long been extensively advertised in a wide range of print and electronic media, on the Internet and have been extensively used in interstate commerce over the last 20 years” as stated in paragraph 12 of Opposer’s Notice of Opposition.

**Request No. 32**

All documents and things to support Opposer’s contention that Opposer’s AVRA Mark is “famous within the meaning of Section 43(c) of the Lanham Act, as amended 15 U.S.C. § 1125(c)” as stated in paragraph 18 of Opposer’s Notice of Opposition.

**Request No. 33**

All documents and things to support Opposer’s contention that Applicant’s AVRA HOSPITALITY & Design Mark “appears to have been selected and designed in an attempt to trade on Opposer’s famous AVRA® Mark, name and goodwill and would constitute infringement and dilution if so used” as stated in paragraph 25 of Opposer’s Notice of Opposition.

**Request No. 34**

All documents and things to support Opposer’s contention that “the relatedness of restaurant services and hotel services is well known, since many hotels operate restaurants of the same name” as stated in paragraph 26 of Opposer’s Notice of Opposition.

**Request No. 35**

All documents and things to support Opposer's contention that "the parties' services will presumably be encountered by purchasers in the same channels of trade" as stated in paragraph 27 of Opposer's Notice of Opposition.

**Request No. 36**

All documents and things to support Opposer's contention that Applicant's use of the AVRA HOSPITALITY & Design Mark is "likely to cause confusion, mistake or deception with consequential injury to Opposer and the public" as stated in paragraph 29 of Opposer's Notice of Opposition.

**Request No. 37**

All documents and things to support Opposer's contention that "Opposer's Mark has also been used exclusively by Opposer, whether considered for restaurants and bars or even related classes like hotels, hospitality services, or the like" as stated in paragraph 34 of Opposer's Notice of Opposition.

**Request No. 38**

All documents and things to support Opposer's contention that "Applicant's AVRA HOSPITALITY mark is likely to cause dilution by blurring of Opposer's famous, distinctive and federally-registered AVRA® Mark within the meaning of 15 U.S.C. § 1125(c)" as stated in paragraph 36 of Opposer's Notice of Opposition.

**Request No. 39**

All documents and things in support of any other allegation set forth in Opposer's Notice of Opposition.



Dated: Atlanta, Georgia  
June 17, 2019

**Sperry IP Law d/b/a Vivid IP**

**/Marcy L. Sperry/**

Marcy L. Sperry, Esq.  
Georgia Bar No. 455561  
marcy@vividip.com

Alex Aaron  
Georgia Bar No. 162408  
alex@vividip.com

*Attorneys for Applicant  
Avra Hospitality LLC*

3 Alliance Center  
3550 Lenox Rd. NE  
21<sup>st</sup> Floor  
Atlanta, GA 30326

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of June, 2019, Applicant's First Set Of Interrogatories And Requests For The Production Of Documents was served upon the Opposer via email as follows:

[wthomashower@pryorcashman.com](mailto:wthomashower@pryorcashman.com),  
[kholder@pryorcashman.com](mailto:kholder@pryorcashman.com),  
[tmdocketing@pryorcashman.com](mailto:tmdocketing@pryorcashman.com)  
[rklarberg@pryorcashman.com](mailto:rklarberg@pryorcashman.com)

/Marcy L. Sperry/  
Attorney for Applicant

# EXHIBIT C

**From:** [Klarberg, Ryan S.](#)  
**To:** [Marcy Sperry](#); [John Brinson](#); [Noémie Broussoux-Coutard](#); [Alex Aron](#); ["c44b05b91+matter1158325579@maildrop.clio.com"](#)  
**Cc:** [Thomashower, William](#); [Holder, Kamilah M.](#)  
**Subject:** RE: 48th Restaurant Associates v. Avra Hospitality - Opp. No. 91246895  
**Date:** Wednesday, July 10, 2019 6:07:32 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)

---

Hi Marcy,

We will grant your client a two-week extension, and our client will accept a two week extension to serve its responses.

The new dates are set forth below:

Opposer served discovery on June 14, 2019 – original response due date was July 14 – **Applicant's new response due date is July 28, 2019.**

Applicant served discovery on June 17, 2019 – original response due date was July 17 – **Opposer's new response due date is July 31, 2019.**

Best Regards,

Ryan

---

**From:** Marcy Sperry [mailto:[marcy@vividip.com](mailto:marcy@vividip.com)]  
**Sent:** Wednesday, July 10, 2019 4:59 PM  
**To:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>; John Brinson <[john@vividip.com](mailto:john@vividip.com)>; Noémie Broussoux-Coutard <[noemie@vividip.com](mailto:noemie@vividip.com)>; Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>; 'c44b05b91+matter1158325579@maildrop.clio.com'  
**Cc:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>  
**Subject:** RE: 48th Restaurant Associates v. Avra Hospitality - Opp. No. 91246895

Hi Ryan,

I hope you had a nice 4<sup>th</sup>.

My client has requested a two-week extension to respond to 48<sup>th</sup>'s discovery requests due to travel schedules. Would your client grant such an extension? We would be happy to grant your client the same 2 week extension to respond.

Best regards,

Marcy

---

**From:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>  
**Sent:** Wednesday, July 3, 2019 10:39 AM  
**To:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>; John Brinson <[john@vividip.com](mailto:john@vividip.com)>; Noémie Broussoux-Coutard <[noemie@vividip.com](mailto:noemie@vividip.com)>; Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>; 'c44b05b91+matter1158325579@maildrop.clio.com'  
**Cc:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>  
**Subject:** RE: 48th Restaurant Associates v. Avra Hospitality - Opp. No. 91246895

Marcy,

For your review, attached please find the proposed ACR Stipulation.

Have a great July 4<sup>th</sup>.

Ryan

---

**From:** Marcy Sperry [<mailto:marcy@vividip.com>]  
**Sent:** Friday, June 21, 2019 4:37 PM  
**To:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>; John Brinson <[john@vividip.com](mailto:john@vividip.com)>; Noémie Broussoux-Coutard <[noemie@vividip.com](mailto:noemie@vividip.com)>; Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>; 'c44b05b91+matter1158325579@maildrop.clio.com'  
**Cc:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>  
**Subject:** RE: 48th Restaurant Associates v. Avra Hospitality - Opp. No. 91246895

Ryan,

Our client will not consent to standing and priority because it could result in our client conceding key defenses in this opposition. Based on our research, case law shows that while in some cases when determining standing the court will only consider if Opposer has a prior registration, in others the court will consider whether the Opposer has standing based on the services in question. Accordingly, we cannot stipulate to standing because it risks eliminating our position that the parties' services are not related. In addition, because we cannot stipulate to standing, we cannot stipulate to priority. If we stipulate to priority, we are conceding that Opposer was the first user of the mark Avra in connection with similar services as Applicant's services. Indeed the Examining Attorney assigned to our application did not find that there was any likelihood of confusion between the parties' marks as no refusal was cited against our client's application. Accordingly, even if the Board finds that Opposer has standing by only looking to the trademark registration, it may not find priority based on the differences in the parties' services.

# **EXHIBIT D**

**From:** [Alex Aron](#)  
**To:** [John Brinson](#)  
**Subject:** FW: 48th Restaurant Associates v. Avra Hospitality - Opp. No. 91246895  
**Date:** Thursday, July 18, 2019 10:28:26 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)  
[image009.png](#)  
[image010.png](#)  
[image013.png](#)  
[image014.png](#)

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Please update docket

**Alex Aron**  
Senior Counsel



P 404.474.1600 | D 470.851.0872  
[alex@vividip.legal](mailto:alex@vividip.legal)



---

**From:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>  
**Sent:** Thursday, July 18, 2019 9:55 AM  
**To:** Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>  
**Cc:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>; Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>  
**Subject:** RE: 48th Restaurant Associates v. Avra Hospitality - Opp. No. 91246895

Yes, that is acceptable.

Please include my colleagues Bill and Kamilah on any future emails. Thanks in advance.

Ryan

---

**From:** Alex Aron [<mailto:Alex@vividip.com>]  
**Sent:** Thursday, July 18, 2019 9:01 AM  
**To:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>  
**Cc:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>  
**Subject:** RE: 48th Restaurant Associates v. Avra Hospitality - Opp. No. 91246895

Hi Ryan,

We appreciate the two-week extension and understand our responses are due on July 28, 2019.

Since July 28th is a Sunday, would it be okay to provide you with our responses on the following business day, Monday, July 29<sup>th</sup>?

Thanks,  
Alex

Alex Aron  
Senior Counsel



P 404.474.1600 | D 470.851.0872  
[alex@vividip.legal](mailto:alex@vividip.legal)



---

**From:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>

**Sent:** Wednesday, July 10, 2019 6:07 PM

**To:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>; John Brinson <[john@vividip.com](mailto:john@vividip.com)>; Noémie Broussoux-Coutard <[noemie@vividip.com](mailto:noemie@vividip.com)>; Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>; 'c44b05b91+matter1158325579@maildrop.clio.com'

**Cc:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>

**Subject:** RE: 48th Restaurant Associates v. Avra Hospitality - Opp. No. 91246895

Hi Marcy,

We will grant your client a two-week extension, and our client will accept a two week extension to serve its responses.

The new dates are set forth below:

Opposer served discovery on June 14, 2019 – original response due date was July 14 – **Applicant's new response due date is July 28, 2019.**

Applicant served discovery on June 17, 2019 – original response due date was July 17 – **Opposer's new response due date is July 31, 2019.**



# **EXHIBIT E**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

48TH RESTAURANT ASSOCIATES LLC,

Opposer,

v.

AVRA HOSPITALITY LLC,

Applicant.

Opposition No.: 91246895

Mark: AVRA HOSPITALITY & Design

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**APPLICANT AVRA HOSPITALITY LLC'S OBJECTIONS AND RESPONSES TO  
OPPOSER 48TH RESTAURANT ASSOCIATES LLC'S FIRST REQUESTS FOR  
PRODUCTION OF DOCUMENTS**

Pursuant to 37 C.F.R. §2.120 and Federal Rule of Civil Procedure 34, Applicant Avra Hospitality LLC ("Applicant"), by and through its undersigned counsel, hereby responds to Opposer 48<sup>th</sup> Restaurant Associates LLC's ("Opposer") First Requests for the Production of Documents ("Request" or "Requests") as follows:

**GENERAL OBJECTIONS**

Applicant objects to each Request propounded by Opposer to the extent that:

1. Each is overly broad and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation;
2. Each seeks information regarding matters that are not relevant to the subject matter of, or issues raised in, this proceeding or that are not reasonably calculated to lead to the discovery of evidence that is relevant to this proceeding;
3. Each seeks to discover legal conclusions rather than facts;

4. Each seeks production of information, documents or things protected from disclosure by the attorney–client privilege, the work product doctrine, or other applicable privileges or protections;

5. Each seeks information, documents, or things protected against disclosure as the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of Applicant;

6. Each seeks information for an unreasonable and irrelevant or unlimited period of time;

7. Each is vague and ambiguous and incapable of a response as phrased;

8. Each seeks proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the privacy and interests of Applicant;

9. Each seeks information, documents or things that are: (i) unreasonably cumulative or duplicative; (ii) obtainable from some other source that is more convenient, less burdensome, or less expensive; or (iii) already available to Opposer and/or which has already been provided to Opposer;

10. Each seeks information, documents, or things which are available in the public domain or which are in the possession, custody, or control of third parties; and

11. Each purports to impose any obligation on Applicant greater than that provided in the Federal Rules of Civil Procedure, the Code of Federal Regulations, or any case law regarding the proper scope of discovery.

Applicant's responses to these Requests are based upon a duly diligent review of information presently available to Applicant. Because investigation of the facts pertaining to this pending action is continuing and discovery has not yet been completed, Applicant may amend

and/or supplement these responses. Further, neither Applicant's responses nor any production of document or things shall be construed as an admission by Applicant of the relevance and/or admissibility of such responses, documents, or things. Additionally, Applicant may rely on other documents and information that come to light in the course of this proceeding, including documents and information that may be produced or provided by Opposer or any third parties.

Applicant incorporates the foregoing general objections into each and every of Applicant's responses to the individual Requests as if fully set forth therein.

### **DOCUMENTS AND THINGS TO BE PRODUCED**

**1. All documents and things identified, referred to, or used as a basis to respond in Applicant's responses to Opposer's First Set of Interrogatories.**

**Response:** Applicant objects to this Request to the extent it seeks information, documents, or things which are already available in the public domain, already available to the Opposer and/or obtainable from some other source that is more convenient, less burdensome, or less expensive. Applicant also objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Additionally, Applicant objects to this Request to the extent it seeks proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**2. All documents and things concerning Applicant's creation, consideration, selection, trademark clearance, adoption, acquisition and first use of Applicant's Mark in the United States, including, without limitation, the meaning, design, and commercial**

**impression of Applicant's Mark, any trademark search reports, opinions of counsel regarding proposed marks, any state or federal application to register a trademark or any trademark registration actually obtained, any responses thereto from the United States Patent and Trademark Office or other responsible authority or agency, and any written communications related thereto.**

**Response:** Applicant objects to this Request to the extent it seeks information, documents, or things which are available in the public domain, already available to Opposer, and/or obtainable from some other source that is more convenient, less burdensome, or less expensive. Applicant refers Opposer to the United States Patent and Trademark ("USPTO") website for publicly available information concerning Applicant's federal application to register Applicant's Mark, including responses from the USPTO and written communications related thereto. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**3. All documents and things concerning designations other than Applicant's Mark considered by Applicant to be used in connection with the goods or services identified in the Application.**

**Response:** Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Additionally, Applicant objects to this Request to the extent it seeks proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**4. All documents and things concerning any change or modification of Applicant's Mark since the conception of Applicant's Mark.**

**Response:** Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Additionally, Applicant objects to this Request to the extent it seeks proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**5. All documents and things concerning any complaints, petitions, oppositions, objections, cancellations, administrative proceedings, legal opinions, cease and desist letters or civil actions made by or against Applicant involving Applicant's Mark.**

**Response:** Applicant objects to this Request on the ground that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Applicant further objects on the basis that this Request is overly broad and unduly burdensome on the ground that it seeks documents regarding *any* proceeding involving the Applicant as such Request encompasses subject matter that is not relevant to any party's claims or defenses and not proportional to the needs of the case to the of the case. Applicant also objects to this Request on the grounds that it seeks documents protected from disclosure by attorney-client privilege or work product immunity. Additionally, Applicant objects to this Request to the extent it seeks proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Subject to and without waiving the

foregoing objections, other than the instant action, there are no responsive, non-privileged documents to this Request.

**6. All documents and things concerning any communications between Applicant (including without limitation, through an attorney) and the Patent and Trademark Office and/or the Trademark Trial and Appeal Board concerning Applicant's Mark.**

**Response:** Applicant objects to this Request to the extent it seeks information, documents, or things which are available in the public domain, already available to Opposer, and/or obtainable from some other source that is more convenient, less burdensome, or less expensive. Applicant refers Opposer to the USPTO website for publicly available information concerning communications between the Applicant and the USPTO and the Trademark Trial and Appeal Board. Applicant also objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Subject to and without waiving the foregoing objections, Applicant has no responsive non-privileged documents to this Request.

**7. Documents sufficient to show the corporate structure, organization and operation of Applicant and any of Applicant's companies or affiliates that have been, are and/or will be offering goods or services in connection with Applicant's Mark, including, without limitation, documents identifying all related or affiliated companies, corporate officers and members of the board of directors, executive committees or governance bodies.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Additionally, Applicant objects to this Request to the extent that it seeks production of information, documents, or things

protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Additionally, Applicant objects to this Request to the extent it seeks proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**8. Documents sufficient to identify goods or services which have been or are currently offered for sale, sold, advertised or promoted bearing or offered in connection with Applicant's Mark in the United States.**

**Response:** Applicant objects to this Request on the ground that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Applicant refers Opposer to its website ([www.avrahospitality.com](http://www.avrahospitality.com)) which describes Applicant's services offered in connection with the Applicant's Mark. Subject to and without waiving the foregoing objection, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**9. Documents sufficient to identify goods or services that Applicant intends will be offered for sale, sold, advertised or promoted by Applicant under Applicant's Mark in the United States.**

**Response:** Applicant objects to this Request on the grounds that it is duplicative of Request No. 8. Subject to and without waiving the foregoing objection, Applicant hereby incorporates by reference its Response to Request No. 8 as if fully set forth.

**10. Documents reflecting use in commerce by Applicant of each good or service**



**identified in the Application.**

**Response:** Applicant objects to this Request on the ground that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Applicant refers Opposer to Applicant's website ([www.avrahospitality.com](http://www.avrahospitality.com)) regarding Applicant's use in commerce of Applicant's Mark in connection with business management of hotel properties. Subject to and without waiving the foregoing objection, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**11. All documents and things concerning the past, present, or future, intended advertising or promotion of Applicant's Services in the United States, including without limitation, advertisements, promotional materials, sales materials, videotapes, DVDs, social media, websites, catalogues, brochures, and mailing and price lists, whether distributed publicly or not, to the extent they exist.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Additionally, Applicant objects to this Request on the ground that some of the information requested is not relevant to any party's claims or defenses and not proportional to the needs of the case to the extent that it seeks documents relating to Applicant's services without reference to any specific mark. Further, Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Applicant also objects to this Request to the extent it seeks proprietary business information which is confidential and the disclosure of which could

be detrimental to and violate the policy and interests of the Applicant. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents, which specifically relate to Applicant's Mark, responsive to this Request by August 14, 2019.

**12. All documents and things reflecting Applicant's annual actual and/or intended advertising, promotion and publicity expenditures in total for Applicant's Services.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Additionally, Applicant objects to this Request on the ground that some of the information requested is not relevant to any party's claims or defenses and not proportional to the needs of the case to the extent that it seeks documents relating to Applicant's services without reference to any specific mark. Further, Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Applicant also objects to this Request to the extent it seeks proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents, which specifically relate to Applicant's Mark, responsive to this Request by August 14, 2019.

**13. Documents sufficient to show each kind of activity and the total annual sales and/or revenue, and profit for each good or service sold or provided by Applicant under Applicant's mark.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive,

and/or would require Applicant to make an unreasonable investigation. Further, Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Applicant also objects to this Request to the extent it seeks proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**14. Documents sufficient to show Applicant's corporate structure including any of Applicant's parents, subsidiaries and affiliates.**

**Response:** Applicant objects to this Request on the grounds that it is duplicative of Request No. 7. Subject to and without waiving the foregoing objection, Applicant hereby incorporates by reference its response to Request No. 7 as if fully set forth.

**15. All documents and things concerning the media in which Applicant advertises or promotes, or intends to advertise or promote, goods or services offered in connection with Applicant's Mark in the United States, including without limitation, media schedules and budgets.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Further, Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Applicant also objects to this Request to the extent it seeks

proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**16. All documents and things concerning Applicant's yearly expenditures to date and planned future expenditures relating to the sale of Applicant's Services.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Additionally, Applicant objects to this Request on the ground that some of the information requested is not relevant to any party's claims or defenses and not proportional to the needs of the case to the extent that it seeks documents relating to Applicant's services without reference to any specific mark. Further, Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Applicant also objects to this Request to the extent it seeks proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents, which specifically relate to Applicant's Mark, responsive to this Request by August 14, 2019.

**17. All documents and things concerning any business plans or projections, revenue projections, cost projections and/or product plans or proposals as they relate to Applicant's Services and/or the use of Applicant's Mark.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope

and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Further, Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Applicant also objects to this Request to the extent it seeks proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**18. All documents and things concerning the date each of the goods or services identified in the Application were first sold in interstate commerce in the United States under Applicant's Mark, if any.**

**Response:** Applicant objects to this Request on the ground that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Applicant is not using the Applicant's Mark in connection with hotel services. Subject to and without waiving the foregoing objection, Applicant will produce all non-privileged documents that relate to use of Applicant's Mark in connection with business management of hotel properties responsive to this Request by August 14, 2019.

**19. All documents and things concerning the channels of distribution through which Applicant offers, has offered, or will offer goods or services in connection with Applicant's Mark in the United States.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope

and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Further, Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Applicant also objects to this Request to the extent it seeks proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**20. All documents and things concerning the U.S. territories in which Applicant offers, has offered, or will offer goods or services in connection with Applicant's Mark.**

**Response:** Applicant objects to this Request on the ground that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Subject to and without waiving the foregoing objection, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**21. All documents and things concerning any agreements between Applicant and any other person or entity concerning Applicant's Mark.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Additionally, Applicant objects to this Request on the ground that some of the information requested is not relevant to any party's claims or defenses and not proportional to the needs of the case to the extent that it

seeks documents relating to *any* agreement between the Applicant and a third party concerning the Applicant's Mark as such Request encompasses subject matter not at issue in this case. Further, Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Applicant also objects to this Request to the extent it seeks proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**22. All documents and things concerning any assignment, license or other transfer to or from Applicant of any right, statutory or otherwise, in Applicant's Mark.**

**Response:** Applicant objects to this Request on the grounds that it is duplicative of Request No. 21. Subject to and without waiving the foregoing objection, Applicant hereby incorporates by reference its response to Request No. 21 as if fully set forth.

**23. Documents and things sufficient to identify the targeted consumers, whether prospective or actual, to whom Applicant has or will market, advertise, promote, offer, or sell goods or services in connection with Applicant's Mark in the United States.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Further, Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Applicant also objects to this Request to the extent it seeks

proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**24. Documents and things sufficient to identify the target consumer groups to whom Applicant has or will market, advertise, promote, offer, or sell goods or services bearing or offered in connection Applicant's Mark.**

**Response:** Applicant objects to this Request on the grounds that it is duplicative of Request No. 23. Subject to and without waiving the foregoing objection, Applicant hereby incorporates by reference its response to Request No. 23 as if fully set forth.

**25. All documents and things concerning complaints Applicant has received, including without limitation, from consumers and retailers, concerning any goods or services sold in connection with Applicant's Mark in the United States.**

**Response:** Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Subject to and without waiving the foregoing objection, Applicant has no documents responsive to this Request.

**26. All documents and things concerning Opposer, Opposer's Mark, and Applicant's awareness of or exposure to Opposer and Opposer's Mark, Opposer's services, and Opposer's places of business, including, without limitation, internet searches, trademark searches, or search reports, purchases, or communications.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive,



and/or would require Applicant to make an unreasonable investigation. Further, Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**27. All documents and things concerning communications between Applicant and any other person in which a person inquired about, commented upon or referred to Opposer or Opposer's goods or services in any way.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Further, Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Applicant also objects to this Request to the extent it seeks proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Subject to and without the waiving the foregoing objections, Applicant has no non-privileged documents responsive to this Request.

**28. All documents and things concerning any instances of actual confusion by any person as to the source, sponsorship, authorization or approval of any goods or services offered in connection with Applicant's Mark.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope

and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Subject to and without the waiving the foregoing objection, Applicant has no documents responsive to this Request.

**29. All documents concerning Applicant's contentions in prior correspondence or in this or other proceedings or litigation that the Applicant's Mark is not likely to be confused with or associated with Opposer or its marks.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Additionally, Applicant objects to this Request on the ground that some of the information requested is not relevant to any party's claims or defenses and not proportional to the needs of the case to the extent that it seeks documents relating to *other* proceedings as such Request encompasses subject matter not at issue in this case. Further, Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Applicant also objects to this Request to the extent it seeks proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**30. All documents not otherwise called for herein which Applicant intends to rely upon as evidence in this proceeding, including without limitation documents concerning the lack of confusion or likelihood thereof between the marks and names of Opposer and those of Applicant.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Further, Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Applicant also objects to this Request to the extent it seeks proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Applicant will rely on and produce the prosecution history for Applicant's Mark in which the Examining Attorney did not issue an Office Action based on confusion between the parties' marks. In addition, Applicant will rely on and produce trademark registrations coexisting for identical or similar marks owned by two different parties, in which one mark is for restaurant services and the other is for hotels and/or business management of hotel services. Applicant will also produce case law in which there was no likelihood of confusion between similar marks for similar services. Subject to and without waiving the foregoing objections, Applicant will produce all other non-privileged documents responsive to this Request by August 14, 2019.

**31. All documents concerning any instance or purported instance when any person or entity has made inquiry or has been confused, mistaken or deceived as between the identity of Applicant and the identity of Opposer, including any of their respective subsidiaries, affiliates or divisions, or the reverse of such inquiry, confusion, mistake or deception, including same occurring in any communication, correspondence, transaction, proposed transaction, news story, article or otherwise.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope

and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Subject to and without the waiving the foregoing objections, Applicant has no documents responsive to this Request.

**32. All documents concerning any person's belief of an association in, or of any confusion as to, the relationship between Applicant and Opposer or their goods or services.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Subject to and without the waiving the foregoing objection, Applicant has no documents responsive to this Request.

**33. All documents concerning communications, emails, telephone calls or correspondence received by Applicant from any person, intended for or seeking to reach Opposer.**

**Response:** Applicant objects to this Request on the grounds that it is duplicative of Request No. 32. Subject to and without waiving the foregoing objection, Applicant hereby incorporates by reference its response to Request No. 32 as if fully set forth.

**34. All documents and things concerning informal or formal market research conducted by Applicant or on Applicant's behalf concerning Applicant's Mark, including without limitation, studies, search reports, surveys, and market research tests.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Subject to and without the waiving the foregoing objection, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**35. All documents and things concerning informal or formal market research conducted by Applicant or on Applicant's behalf concerning Opposer's Mark or any other trademarks held by Opposer, including, without limitation, studies, search reports, surveys and market research tests.**

**Response:** Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Subject to and without the waiving the foregoing objection, Applicant has no documents responsive to this Request.

**36. All documents and things concerning Applicant's communications concerning Opposer or Opposer's Mark and any actions taken by Applicant relating thereto, including, without limitation, telephone logs, messages, correspondence, email communications, memoranda and business proposals.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Further, Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Applicant also objects to this Request to the extent it seeks proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

**37. All documents referring or relating to plans for steps toward expansion by**

**Applicant of the type of goods or services under which Applicant's Mark is used or relating to plans to alter the present channels of trade, or to offer such goods or services to Persons other than Applicant's present purchasers, if any.**

**Response:** Applicant objects to this Request on the grounds that it is overly broad in scope and any attempt to respond would be unduly burdensome, expensive, harassing and oppressive, and/or would require Applicant to make an unreasonable investigation. Further, Applicant objects to this Request to the extent that it seeks production of information, documents, or things protected from disclosure by the attorney-client privilege, the work product doctrine, or other applicable privileges or protections. Applicant also objects to this Request to the extent it seeks proprietary business information which is confidential and the disclosure of which could be detrimental to and violate the policy and interests of the Applicant. Subject to and without waiving the foregoing objections, Applicant will produce all non-privileged documents responsive to this Request by August 14, 2019.

Dated: Atlanta, Georgia  
July 29, 2019

**Sperry IP Law d/b/a Vivid IP**

**/Marcy L. Sperry/**

Marcy L. Sperry, Esq.  
Georgia Bar No. 455561  
marcy@vividip.com

**Alex Aron**

Georgia Bar No. 162408  
alex@vividip.com

*Attorneys for Applicant  
Avra Hospitality LLC*

3 Alliance Center  
3550 Lenox Rd. NE  
21<sup>st</sup> Floor  
Atlanta, GA 3032

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of July, 2019, Applicant Avra Hospitality LLC's Objections And Responses To Opposer 48th Restaurant Associates LLC's First Requests For Production Of Documents was served upon the Opposer via email as follows:

wthomashower@pryorcashman.com,  
kholder@pryorcashman.com,  
tmdocketing@pryorcashman.com  
rklarberg@pryorcashman.com

**/Marcy L. Sperry/**  
Marcy L. Sperry, Esq.

# **EXHIBIT F**



**From:** [Alex Aron](#)  
**To:** [John Brinson](#)  
**Subject:** FW: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents  
**Date:** Tuesday, September 17, 2019 11:39:52 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Exhibit F

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**From:** Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>  
**Sent:** Monday, July 29, 2019 6:57 PM  
**To:** Alex Aron <Alex@vividip.com>; Thomashower, William <WThomashower@PRYORCASHMAN.com>; Holder, Kamilah M. <KHolder@PRYORCASHMAN.com>; Docketing, TM <TMDocketing@PRYORCASHMAN.com>  
**Cc:** Marcy Sperry <marcy@vividip.com>; c44b05b91+matter1158325579@maildrop.clio.com  
**Subject:** RE: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

Thanks.

In our review of Applicant's discovery requests, we believe that the number of interrogatories served exceeds the limitation identified in our agreement, which as you know, limited interrogatories to 40 total and document requests to 50 total.

According to TMBP Section 405.03(d), "[i]n determining whether the number of interrogatories served by one party on another exceeds the limit . . . , the Board will count each subpart within an interrogatory as a separate interrogatory, regardless of whether the subpart is separately designated (i.e., separately numbered or lettered)."

By way of examples, Applicant's Interrogatory No. 1 consists of no less than five separate interrogatories, and Interrogatory No. 3 consists of no less than 10 separate interrogatories.

We are willing to discuss our counting methods in an attempt to resolve the dispute over the number of interrogatories and discuss service of a revised set of interrogatories. Alternatively, you may wish you revise the interrogatories on your own to delete a number of interrogatories to meet the agreed-upon 40 interrogatory limit and re-serve.

If necessary, we are available for a phone call to discuss.

Ryan

---

**From:** Alex Aron [<mailto:Alex@vividip.com>]  
**Sent:** Monday, July 29, 2019 6:42 PM  
**To:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>; Docketing, TM <[TMDocketing@PRYORCASHMAN.com](mailto:TMDocketing@PRYORCASHMAN.com)>;

Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>

**Cc:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>; [c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)

**Subject:** Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

Hi Ryan,

Attached please find Avra Hospitality's objections and responses to 48<sup>th</sup>'s First Set of Interrogatories and Requests for Production of Documents.

Have a nice evening.

Thanks,  
Alex

**Alex Aron**  
Senior Counsel



**P** 404.474.1600 | **D** 470.851.0872

3 Alliance Center | 3550 Lenox Road NE, Floor 21 | Atlanta, GA 30326

[alex@vividip.com](mailto:alex@vividip.com)



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# **EXHIBIT G**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

**48<sup>TH</sup> RESTAURANT ASSOCIATES LLC,**

Opposer,

v.

**AVRA HOSPITALITY LLC,**

Applicant.

**Opposition No. 91246895**

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**APPLICANT’S FIRST SET OF REQUESTS FOR THE PRODUCTION OF  
DOCUMENTS AND INTERROGATORIES TO OPPOSER**

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. §2.120, Applicant Avra Hospitality LLC (“Applicant”) requests that Opposer 48<sup>th</sup> Restaurant Associates LLC (“Opposer”) answer under oath the following interrogatories and produce the following documents for inspection and copying at the office of Sperry IP Law LLC d/b/a Vivid IP, 3 Alliance Center, 3550 Lenox Road NE, Floor 21, Atlanta, GA, 30326, within 30 days after service hereof.

**DEFINITIONS AND INSTRUCTIONS**

A. The term “Applicant” shall mean Avra Hospitality LLC and all parent, subsidiary, related predecessor and/or successor entities, divisions, employees, agents and/or representatives thereof.

B. The term “Opposer”, “you”, or “your” shall mean Opposer 48th Restaurant Associates LLC and all parent, subsidiary, related predecessor and/or successor entities, divisions, employees, agents and/or representatives thereof.

C. The term “AVRA HOSPITALITY & Design Mark” shall mean the mark that is the subject of U.S. Trademark Application No. 87/849,410 for AVRA HOSPITALITY & Design.

D. The term “AVRA Mark” or “Opposer’s AVRA Mark” shall mean all trademarks, service marks, trade names, business names, or names containing or comprising the term “Avra” owned by the Opposer, including the mark that is the subject of U.S. Trademark Registration No. 2,493,466.

E. The term “commerce” means commerce subject to regulation by Congress, as defined in 15 U.S.C. §1127.

F. As used herein, the terms “entity” and “person” include natural persons, governmental entities, organizations, corporations, partnerships, associations, joint ventures and any other individual or group of individuals that has the purpose of conducting or, in fact, conducts business.

G. The term “document” shall be given the broadest possible scope under F.R.C.P. 34 and includes, but is not limited to, all writings, correspondence, memoranda, handwritten notes, drafts, invoices, contracts, purchase orders, letters, checks, receipts, books, pamphlets, publications, stickers, posters, catalogs, labels, displays, photographs, slides, videotapes, films, artwork, drawings, sketches, illustrative materials, layouts, tear sheets, magnetic recording tapes, microfilms, computer printouts, e-mail, work sheets, and files from any personal computer, notebook or laptop computer, file server, minicomputer, mainframe computer or any other storage means by which information is retained in retrievable form, including files that are still on any storage media, but that are identified as “erased but recoverable,” and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by a mechanical or electronic process.

H. The term “identify” means: (a) when applied to a person: to give the person’s full name, present or last known address, e-mail address and telephone number, and, when referring to a natural person, additionally, the present or last known place of employment; (b) when applied to documents: to give the (i) type of document, (ii) general subject matter, (iii) date of the document, and (iv) author(s), addressee(s) and recipient(s); and (c) when applied to facts, to describe fully the (i) occurrence, event, act, omission, or failure to act, (ii) actor or the person who acted or failed to act, (iii) date and time when, and place where, each act or failure to act occurred, and (iv) if the fact is an oral communication, where and when it took place, who was present, and, with as much detail as possible, the substance of what each participant said.

I. The term “concerning” means referring to, relating to, embodying, connected with, commenting on, responding to, showing, describing, analyzing or constituting.

J. The singular and plural forms are used herein interchangeably, as are the masculine and feminine forms and the present and past tenses, and such terms should be construed as necessary to bring within the scope of the interrogatory/document request all documents and information which might otherwise be construed to be outside its scope.

K. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory/document request all documents and information which might otherwise be construed to be outside its scope.

L. If any information or document called for in any interrogatory or request is withheld in whole or in part by reason of a claim of attorney-client privilege or any other claim of immunity from discovery, then, at the time the information or document is to be produced, a list is to be furnished identifying any such information or document withheld together with the following information: date and title of the document; name and job title of each author, writer or sender of

the document; name and job title of each recipient, addressee or other person to whom the original or any copy of the document was sent or furnished; if you contend that an author or recipient of the document is an attorney for purposes of claiming privilege or immunity from discovery, identify the Bar of which he or she was a member at the time of the communication in question; the general subject matter of the information or document withheld; the basis for the claim of privilege or immunity from discovery; and the interrogatory or request to which the information or document is responsive.

M. In the event that any document called for by this request has been destroyed, lost, discarded or otherwise disposed of, identify any such document as completely as possible, including, without limitation, the date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

N. Documents shall be produced as they are kept in the ordinary course of business or shall be organized and labeled to correspond to the document request to which they are responsive.

O. These requests are continuing in nature so as to require prompt supplemental responses if you, or any person acting on your behalf, obtain additional responsive documents or information called for by these discovery requests between the time of the original response and the time set for trial.

P. Where an objection is made to a request or subpart thereof, state all grounds upon which you base your objection.

Q. If there are no documents responsive to any particular category, you shall state so in writing

R. You shall take immediate steps to preserve all documents and information responsive to these discovery requests, including electronic data that may exist on backup and/or

archived electronic computerized data compilations. These measures include, but are not limited to, discontinuation of all data destruction and backup tape recycling policies applicable to such documents.

S. Each request for documents seeks production of the document in its entirety, without abbreviation or expurgation, including all attachments or other matters affixed thereto.

## **INTERROGATORIES**

### **Interrogatory No. 1**

State the date Opposer first selected the AVRA Mark for use or intended use in connection with any goods or services in the United States or in commerce with the United States.

### **Interrogatory No. 2**

Identify all persons or entities who participated in or were consulted in the creation, selection, design or adoption of the AVRA Mark, including a description of the nature of their participation or consultation.

### **Interrogatory No. 3**

Identify any searches, opinions, investigations, analyses or studies related to the creation, design, selection, adoption, or clearance of the AVRA Mark, including without limitation the persons involved, the date(s), and the data or results of such searches, opinions, investigations, analyses, or studies.

### **Interrogatory No. 4**

Identify each good or service in which the Opposer (or any person or entity authorized by Opposer) has used or is using the AVRA Mark in the United States or in commerce with the United States.



**Interrogatory No. 5**

Identify the date of first use of the AVRA Mark in the United States.

**Interrogatory No. 6**

Identify the date of first use in commerce of the AVRA Mark in the United States.

**Interrogatory No. 7**

Identify the geographic area(s), by city and state, in which Opposer offers, has offered, or intends to offer goods or services under the AVRA Mark in the United States.

**Interrogatory No. 8**

Identify the annual volume of sales for each year to the present, by dollar amount and/or unit amount, for each of the Opposer's goods and services offered for sale, sold, and/or distributed in connection with the AVRA Mark

**Interrogatory No. 9**

Identify any revenues, including but not limited to any licensing revenues that Opposer has received in connection with the sale and distribution of the Opposer's goods and services under the AVRA Mark.

**Interrogatory No. 10**

Identify all channels of trade in the United States (e.g., types of stores, catalogs, mail order, Internet, promotional sales, private sales, etc.) through which Opposer offers for sale, sells, or distributes goods and services under the AVRA Mark to the ultimate purchaser, consumer, or user.

**Interrogatory No. 11**

Identify the type of customers to which such Opposer's goods and services are, were, or are intended to be marketed in connection with the AVRA Mark.

**Interrogatory No. 12**

Identify all third party media references to Opposer's goods and services under the AVRA Mark.

**Interrogatory No. 13**

Identify any persons or entities Opposer has authorized, licensed, granted, or otherwise conveyed the right to use Opposer's AVRA Mark, or to sell Opposer's Goods and Services in the United States or in commerce within the United States, including the date when such right was authorized, licensed, granted, or otherwise conveyed.

**Interrogatory No. 14**

Identify any claims, conflicts, objections, cease and desist demands, trademark opposition and/or cancellation proceedings, other *inter partes* proceedings and litigations in which Opposer has been involved concerning the AVRA Mark, including but not limited to the parties involved, the court or other tribunal of such action or proceeding, and the current status and/or final outcome of such matter.

**Interrogatory No. 15**

Separately for each year in which advertising, marketing, or promotion of Opposer's AVRA Mark has occurred, state the annual expenditures for such advertising, marketing, or promotion for the AVRA Mark.

**Interrogatory No. 16**

Specify the approximate gross revenue including, but not limited to, projected revenue generated by sales of Opposer's goods and services under the AVRA Mark in the United States for each year since such sales began to the present.

**Interrogatory No. 17**

Identify the persons who are most knowledgeable about the advertising, promotion, use, and/or intended use of the Opposer's AVRA Mark in the United States.

**Interrogatory No. 18**

Identify the persons who are most knowledgeable concerning any alleged fame and public recognition of Opposer's AVRA Mark,.

**Interrogatory No. 19**

Identify with specificity how the Opposer advertises and markets its goods and services under the AVRA Mark for each year since such advertising began to the present, including the nature of all marketing activities in the United States (including advertisements, promotions, articles, press releases whether in print, transmitted by radio, television, wireless format, digital, and Internet) and for how long each marketing activity occurred.

**Interrogatory No. 20**

Identify each person who has ever been responsible for bookkeeping or accounting with respect to Opposer's goods and services offered or sold under the AVRA Mark.

**Interrogatory No. 21**

Identify every publication in which Opposer has advertised or intends to advertise its goods and services under the AVRA Mark in the United States.

**Interrogatory No. 22**

If Opposer has obtained any opinions regarding any of the issues in this action, identify the person who provided each opinion, including the general topic of the opinion and any documents concerning each such opinion.

**Interrogatory No. 23**

Specify the retail price of each of Opposer's goods and services offered under the AVRA Mark in the United States for each year since sales began to the present.

**Interrogatory No. 24**

Identify each person with knowledge of the facts or statements set forth in Opposer's Notice of Opposition, or with knowledge of any facts pertinent to this action and state the facts or subject matter of each such person's knowledge.

**Interrogatory No. 25**

Identify all facts to support Opposer's contention that "Opposer has received widespread unsolicited media attention for its restaurants, which have been featured in prominent magazines, newspapers, media and electronic publications" as stated in paragraph 2 of Opposer's Notice of Opposition.

**Interrogatory No. 26**

Identify all facts to support Opposer's contention that Opposer's AVRA Mark "have long been extensively advertised in a wide range of print and electronic media, on the Internet and have been extensively used in interstate commerce over the last 20 years" as stated in paragraph 12 of Opposer's Notice of Opposition.

**Interrogatory No. 27**

Identify all facts to support Opposer's contention that Opposer's AVRA Mark is "famous" within the meaning of Section 43(c) of the Lanham Act, as amended 15 U.S.C. § 1125(c)" as stated in paragraph 18 of Opposer's Notice of Opposition.

**Interrogatory No. 28**

Identify all facts to support Opposer's contention that Applicant's AVRA HOSPITALITY & Design Mark "appears to have been selected and designed in an attempt to trade on Opposer's

famous AVRA® Mark, name and goodwill and would constitute infringement and dilution if so used” as stated in paragraph 25 of Opposer’s Notice of Opposition.

**Interrogatory No. 29**

Identify all facts to support Opposer’s contention that “the relatedness of restaurant services and hotel services is well known, since many hotels operate restaurants of the same name” as stated in paragraph 26 of Opposer’s Notice of Opposition.

**Interrogatory No. 30**

Identify all facts to support Opposer’s contention that “the parties’ services will presumably be encountered by purchasers in the same channels of trade” as stated in paragraph 27 of Opposer’s Notice of Opposition.

**Interrogatory No. 31**

Identify all facts to support Opposer’s contention that Applicant’s use of the AVRA HOSPITALITY & Design Mark is “likely to cause confusion, mistake or deception with consequential injury to Opposer and the public” as stated in paragraph 29 of Opposer’s Notice of Opposition.

**Interrogatory No. 32**

Identify all facts to support Opposer’s contention that “Opposer’s Mark has also been used exclusively by Opposer, whether considered for restaurants and bars or even related classes like hotels, hospitality services, or the like” as stated in paragraph 34 of Opposer’s Notice of Opposition.

**Interrogatory No. 33**

Identify all facts to support Opposer’s contention that “Applicant’s AVRA HOSPITALITY mark is likely to cause dilution by blurring of Opposer’s famous, distinctive and federally-

registered AVRA® Mark within the meaning of 15 U.S.C. § 1125(c)” as stated in paragraph 36 of Opposer’s Notice of Opposition.

**Interrogatory No. 34**

Identify all persons who participated in or provided information used in preparing answers to the above Interrogatories, separately identifying such person with respect to each particular Interrogatory number.

**DOCUMENT REQUESTS**

**Request No. 1**

Representative samples of each of Opposer’s AVRA Mark used in connection with each of Opposer’s Goods and Services.

**Request No. 2**

All documents concerning Opposer’s conception, selection, creation, design, and adoption of Opposer’s AVRA Mark.

**Request No. 3**

All documents concerning any trademark searches, investigations, analyses, studies, or opinion letters conducted or reviewed by or on behalf of Opposer concerning Opposer’s AVRA Mark, including but not limited to those conducted or prepared to determine the availability of Opposer’s AVRA Mark for adoption, use, and/or registration by Opposer.

**Request No. 4**

Documents sufficient to identify: (a) the date of first use of Opposer’s AVRA Mark; (b) the geographic scope (including city and state) of use of Opposer’s AVRA Mark; (c) any and all customers, distributors, sellers, or third parties to which Opposer’s Goods and Services under the AVRA Mark have been sold; (d) the Goods and Services offered or sold under the AVRA Mark;

and (e) the amount of sales (in dollars and units) made under Opposer's AVRA Mark, for each year since inception.

**Request No. 5**

All documents concerning the total annual volume of gross sales, by units and dollars, of Opposer's Goods and Services under Opposer's AVRA Mark in the United States or in commerce with the United States, from the date of first use of Opposer's AVRA Mark to the present.

**Request No. 6**

Documents sufficient to identify the amount of money expended by Opposer in advertising and promoting Opposer's AVRA Mark in the United States or in commerce with the United States for each year from the date of first use to the present.

**Request No. 7**

All documents concerning third parties that are using or have used marks containing Opposer's AVRA Mark, in whole or part.

**Request No. 8**

All documents concerning Opposer's grant of authorization or license to use (or proposed authorization or license to use) Opposer's AVRA Mark in the United States or in commerce with the United States to any third party, including but not limited to all license agreements.

**Request No. 9**

All documents concerning any claims, conflicts, objections, cease and desist or other demands, litigations, trademark oppositions or cancellation proceedings, arbitrations, administrative proceedings or other disputes of any kind in which Opposer has been involved concerning registration or use of Opposer's AVRA Mark.

**Request No. 10**

All documents concerning the enforcement of Opposer's AVRA Mark by Opposer or its licensees.

**Request No. 11**

All documents concerning any market research, focus groups, surveys or other investigation made or commissioned by or on behalf of Opposer concerning Opposer's AVRA Mark.

**Request No. 12**

All documents concerning the actual or intended channels of trade for Opposer's Goods or Services sold or intended to be sold in connection with Opposer's AVRA Mark.

**Request No. 13**

Representative specimens of advertising and promotional materials used by Opposer in connection with Opposer's AVRA Mark.

**Request No. 14**

All documents concerning Applicant and Applicant's AVRA HOSPITALITY & Design Mark, including but not limited to all communications between the parties and all documents concerning Opposer's first knowledge of Applicant's AVRA HOSPITALITY & Design Mark.

**Request No. 15**

All documents concerning any instructions on the manner in which Opposer's AVRA Mark are to be used, including but not limited to any style guides concerning the usage of Opposer's AVRA Mark.

**Request No. 16**

All documents concerning the demographics of the customers for Opposer's Goods and Services.



**Request No. 17**

All documents concerning the advertising, marketing or promotion of Opposer's Goods and Services marketed or sold in connection with Opposer's AVRA Mark in the United States or U.S. commerce, including but not limited to, samples of each advertisement or promotional piece, any media plans, public relations materials, press kits, correspondence with advertising agencies, public relations firms, media planners, graphic designers, website designers or any other such entities in the advertising and promotional field and documents sufficient to show the advertising and promotional channels used by Opposer to advertise or promote Opposer's Goods and Services offered in connection with Opposer's AVRA Mark.

**Request No. 18**

All documents concerning any alleged fame or public recognition of Opposer's AVRA Mark.

**Request No. 19**

All documents concerning the application and registration of Opposer's AVRA Mark.

**Request No. 20**

All documents concerning any agreements to which Opposer is a party concerning the use or registration of Opposer's AVRA Mark, including but not limited to co-existence agreements, license agreements, and settlement agreements.

**Request No. 21**

All documents concerning any plans for business expansion that Opposer has for new products or services or for new markets or channels of trade concerning Opposer's Goods and Services or Opposer's AVRA Mark.

**Request No. 22**

All documents concerning any communications between Opposer and any third party concerning Applicant, Applicant's AVRA HOSPITALITY & Design Mark, or the instant proceedings.

**Request No. 23**

All unsolicited media and third party references concerning Opposer's Goods and Services offered and/or sold in connection with Opposer's AVRA Mark.

**Request No. 24**

All documents identified or otherwise relied on or referred to by Opposer in responding to Opposer's interrogatories above.

**Request No. 25**

All documents concerning any communications between Opposer and any third party, including without limitation licensees, customers, retailers, wholesalers, importers, exporters and distributors, concerning Opposer's AVRA Mark or Opposer's Goods and Services.

**Request No. 26**

Documents sufficient to show Opposer's document retention policies, document destruction policies, document retention practices and document destruction practices.

**Request No. 27**

All documents concerning the specimens of use submitted in connection with each of Opposer's AVRA Mark to the United States Patent and Trademark Office.

**Request No. 28**

All documents concerning marks owned or registered by third parties containing or comprising the term "AVRA" in connection with goods and services identical or related to those the Goods and Services offered by Opposer under Opposer's AVRA Mark.

**Request No. 29**

All documents and things sufficient to fully describe the organization and management structure of Opposer, including but not limited to company organizational charts with lists of parents or subsidiaries, department organizational charts, lists of management members, duties, and responsibilities, and the organizational structure or reporting responsibilities of any or all of Opposer's employees, officers, and agents.

**Request No. 30**

All documents and things to support Opposer's contention that "Opposer has received widespread unsolicited media attention for its restaurants, which have been featured in prominent magazines, newspapers, media and electronic publications" as stated in paragraph 2 of Opposer's Notice of Opposition.

**Request No. 31**

All documents and things to support Opposer's contention that Opposer's Goods and Services and Opposer's AVRA Mark "have long been extensively advertised in a wide range of print and electronic media, on the Internet and have been extensively used in interstate commerce over the last 20 years" as stated in paragraph 12 of Opposer's Notice of Opposition.

**Request No. 32**

All documents and things to support Opposer's contention that Opposer's AVRA Mark is "famous within the meaning of Section 43(c) of the Lanham Act, as amended 15 U.S.C. § 1125(c)" as stated in paragraph 18 of Opposer's Notice of Opposition.

**Request No. 33**

All documents and things to support Opposer's contention that Applicant's AVRA HOSPITALITY & Design Mark "appears to have been selected and designed in an attempt to

trade on Opposer's famous AVRA® Mark, name and goodwill and would constitute infringement and dilution if so used" as stated in paragraph 25 of Opposer's Notice of Opposition.

**Request No. 34**

All documents and things to support Opposer's contention that "the relatedness of restaurant services and hotel services is well known, since many hotels operate restaurants of the same name" as stated in paragraph 26 of Opposer's Notice of Opposition.

**Request No. 35**

All documents and things to support Opposer's contention that "the parties' services will presumably be encountered by purchasers in the same channels of trade" as stated in paragraph 27 of Opposer's Notice of Opposition.

**Request No. 36**

All documents and things to support Opposer's contention that Applicant's use of the AVRA HOSPITALITY & Design Mark is "likely to cause confusion, mistake or deception with consequential injury to Opposer and the public" as stated in paragraph 29 of Opposer's Notice of Opposition.

**Request No. 37**

All documents and things to support Opposer's contention that "Opposer's Mark has also been used exclusively by Opposer, whether considered for restaurants and bars or even related classes like hotels, hospitality services, or the like" as stated in paragraph 34 of Opposer's Notice of Opposition.

**Request No. 38**

All documents and things to support Opposer's contention that "Applicant's AVRA HOSPITALITY mark is likely to cause dilution by blurring of Opposer's famous, distinctive and

federally-registered AVRA® Mark within the meaning of 15 U.S.C. § 1125(c)” as stated in paragraph 36 of Opposer’s Notice of Opposition.

**Request No. 39**

All documents and things in support of any other allegation set forth in Opposer’s Notice of Opposition.

Dated: Atlanta, Georgia  
June 17, 2019

**Sperry IP Law d/b/a Vivid IP**

**/Marcy L. Sperry/**  
Marcy L. Sperry, Esq.  
Georgia Bar No. 455561  
marcy@vividip.com

Alex Aaron  
Georgia Bar No.162408  
alex@vividip.com

*Attorneys for Applicant*  
*Avra Hospitality LLC*

3 Alliance Center  
3550 Lenox Rd. NE  
21<sup>st</sup> Floor  
Atlanta, GA 30326

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of June, 2019, Applicant's First Set Of Interrogatories And Requests For The Production Of Documents was served upon the Opposer via email as follows:

[wthomashower@pryorcashman.com](mailto:wthomashower@pryorcashman.com),  
[kholder@pryorcashman.com](mailto:kholder@pryorcashman.com),  
[tmdocketing@pryorcashman.com](mailto:tmdocketing@pryorcashman.com)

/Marcy L. Sperry/  
Attorney for Applicant

# **EXHIBIT H**

**From:** [John Brinson](#)  
**To:** [John Brinson](#)  
**Subject:** FW: 48th Restaurant v. Avra Hospitality LLC - Discovery Issues and ACR Status  
**Date:** Tuesday, September 17, 2019 12:01:26 PM  
**Attachments:** [image009.png](#)  
[image012.png](#)  
[image013.png](#)  
[image014.png](#)

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**From:** Marcy Sperry  
**Sent:** Sunday, August 11, 2019 4:32 PM  
**To:** 'Klarberg, Ryan S.' <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>  
**Cc:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>; John Brinson <[john@vividip.com](mailto:john@vividip.com)>; [c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)  
**Subject:** FW: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

Ryan,

Your client's responses to our Requests for Production of Documents were due on July 31, 2019 (which includes the extension). Accordingly, these responses are now almost 2 weeks late.

In addition, after you informed us only days before your client's responses were due to Avra Hospitality's First Set of Interrogatories were due (under the extension), we promptly sent you revised interrogatories (the "Revised Interrogatories") well within the numerical limit. These interrogatories were all included in the original set served on June 17<sup>th</sup> and required absolutely no additional review by your client to respond. As such, we asked that your client serve responses to the Revised Interrogatories by August 7<sup>th</sup>, giving your client an additional week beyond the initial two week extension to service responses.

We ask that your client serve responses to our Revised Interrogatories and Document Requests no later than Wednesday, August 14th. Please confirm that your client will serve responses by this date.

Best regards,

Marcy

---

**From:** Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>  
**Sent:** Wednesday, July 31, 2019 4:44 PM  
**To:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>; Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>; Docketing, TM <[TMDocketing@PRYORCASHMAN.com](mailto:TMDocketing@PRYORCASHMAN.com)>  
**Cc:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>; [c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)  
**Subject:** RE: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents



Ryan,

In an effort to resolve any discovery issues, attached please find a revised set of Interrogatories, where we deleted a couple of Interrogatories and separated the subparts of Interrogatories 1 and 3. Under the current count, there are a total of 34 Interrogatories. Given that all of these Interrogatories were fully encompassed within the set served on July 17, 2019 (which you have had for nearly 44 days), we ask for a response to these Interrogatories by August, 7, 2019.

Warm Regards,  
Alex

Alex Aron  
Senior Counsel

**VIVID IP**  
DARE TO DREAM™

P 404.474.1600 | D 470.851.0872  
[alex@vividip.legal](mailto:alex@vividip.legal)



---

**From:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>  
**Sent:** Monday, July 29, 2019 6:57 PM  
**To:** Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>; Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>; Docketing, TM <[TMDocketing@PRYORCASHMAN.com](mailto:TMDocketing@PRYORCASHMAN.com)>  
**Cc:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>; [c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)  
**Subject:** RE: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

Thanks.

In our review of Applicant's discovery requests, we believe that the number of interrogatories served exceeds the limitation identified in our agreement, which as you know, limited interrogatories to 40 total and document requests to 50 total.

According to TMBP Section 405.03(d), "[i]n determining whether the number of interrogatories served by one party on another exceeds the limit . . . , the Board will count each subpart within an interrogatory as a separate interrogatory, regardless of whether the subpart is separately designated (i.e., separately numbered or lettered)."

By way of examples, Applicant's Interrogatory No. 1 consists of no less than five separate interrogatories, and Interrogatory No. 3 consists of no less than 10 separate interrogatories.

We are willing to discuss our counting methods in an attempt to resolve the dispute over the number of interrogatories and discuss service of a revised set of interrogatories. Alternatively, you may wish you revise the interrogatories on your own to delete a number of interrogatories to meet the agreed-upon 40 interrogatory limit and re-serve.

If necessary, we are available for a phone call to discuss.

Ryan

---

**From:** Alex Aron [<mailto:Alex@vividip.com>]

**Sent:** Monday, July 29, 2019 6:42 PM

**To:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>; Docketing, TM <[TMDocketing@PRYORCASHMAN.com](mailto:TMDocketing@PRYORCASHMAN.com)>; Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>

**Cc:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>; [c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)

**Subject:** Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

Hi Ryan,

Attached please find Avra Hospitality's objections and responses to 48<sup>th</sup>'s First Set of Interrogatories and Requests for Production of Documents.

Have a nice evening.

Thanks,  
Alex

**Alex Aron**  
Senior Counsel

**VIVID IP**  
DARE TO DREAM™

P 404.474.1600 | D 470.851.0872

3 Alliance Center | 3550 Lenox Road NE, Floor 21 | Atlanta, GA 30326

[alex@vividip.com](mailto:alex@vividip.com)



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# EXHIBIT I

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application

Serial No. 87/849,410

Mark: AVRA HOSPITALITY

Filing Date: March 26, 2018

-----	X	
48 <sup>TH</sup> RESTAURANT ASSOCIATES LLC,	:	
	:	
Opposer,	:	
	:	Opposition No. 91/246,895
-against-	:	
	:	
AVRA HOSPITALITY LLC,	:	
	:	
Applicant.	:	
-----	X	

**OPPOSER’S RESPONSES AND OBJECTIONS TO APPLICANT’S FIRST SET OF  
REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

Pursuant to Rule 26 and 34 of the Federal Rules of Civil Procedure, 48<sup>th</sup> Restaurant Associates, LLC (hereinafter “Opposer”), by its undersigned attorneys, hereby responds and objects to the First Set of Requests for Production of Applicant Avra Hospitality LLC (hereinafter “Applicant”) as follows:

**GENERAL OBJECTIONS**

Opposer makes its objections to specific Requests for Production by, among other things, incorporating by reference the following objections, as appropriate.

1. Opposer objects to Requests for Production (collectively, “discovery demands”) to the extent they purport to impose obligations of disclosure beyond those required by the Federal Rules of Civil Procedure or the Local Rules of this Court, or other applicable statute, regulation, rule, or court order.

2. Opposer objects to the discovery demands to the extent they call for disclosure of information or documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege, immunity, statute, regulation or rule. The inadvertent disclosure of any privileged information or documents shall not be deemed to be a waiver of any applicable privilege with respect to such information or documents or any other information provided.

3. Opposer objects to the discovery demands to the extent they call for the disclosure of information or documents not relevant to this action, are not proportional to the needs of the case and are not reasonably calculated to lead to the discovery of admissible evidence.

4. Opposer objects to the discovery demands to the extent they seek disclosure of trade secrets or confidential or proprietary information. Opposer will provide such information only subject to the protective order in effect according to the Trademark Trial and Appeal Board (“TTAB”) rules, and Opposer expressly reserves all rights in connection with such information.

5. Opposer objects to the discovery demands to the extent they are vague, ambiguous, or cumulative.

6. Opposer objects to the discovery demands to the extent they are overly broad, unduly burdensome, oppressive, or intended to harass rather than lead to the discovery of evidence related to a bona fide dispute between the parties.

7. Opposer objects to the discovery demands to the extent that they may be construed to seek information or documents in the possession, custody, or control of individuals or entities other than Opposer, its agents or representatives, and to the extent they may be construed to require any search for information or documents beyond one that is limited to the appropriate subject matter files pertinent to the discovery requests and to the personal knowledge of Opposer or its

agents or representatives known or reasonably believed to have personal involvement in, or knowledge of, the subjects included within the discovery demands.

8. By not objecting to any particular discovery demand, Opposer does not concede, imply, or admit that any information or documents responsive to such discovery demand exists.

9. Opposer objects to each discovery demand that seeks the identity of “any,” “each” or “all” persons or documents and things as such requests are overly broad and unduly burdensome.

10. Opposer objects to each discovery demand to the extent that it seeks voluminous information or documents already in Applicant’s possession, custody or control.

11. Opposer objects to each discovery demand to the extent that it seeks information or documents that is or are publicly available, is or are a matter of public record, and/or is or are information generated by other entities.

12. Opposer objects to each discovery demand to the extent that it is indefinite as to time. Unless Opposer indicates otherwise, Opposer’s information and documents will be limited to the last five (5) years prior to the date of the filing of the Notice of Opposition to June 17, 2019, and up to the date that Applicant served its discovery demands.

13. Opposer objects to each discovery demand and to Applicant’s definition of “Opposer’s Goods and Services” to the extent that it is not limited to Opposer’s services as pleaded in the Notice of Opposition.

14. Opposer objects to each discovery demand to the extent that it is indefinite as to geographic location. Opposer’s answers will be limited to the United States.

15. By responding to any particular discovery demand, Opposer does not acknowledge or concede that the facts set forth therein, or the predicate underlying such discovery demand, is accurate or truthful in any respect.

16. In responding to the discovery demands, Opposer neither waives, nor intends to waive, but expressly reserves, any and all objections to the relevance, competence, susceptibility to discovery, materiality, or admissibility of any and all information or documents provided. Inadvertent disclosure of any information or documents which is confidential, proprietary, privileged or objectionable shall not constitute a waiver of any privilege or of any other ground for objection to discovery with respect to such information or documents, or of Opposer's right to object to the use of such information or documents during this proceeding.

17. Opposer reserves the right to amend, modify, and supplement its responses to the discovery demands as appropriate. Opposer further reserves the right to introduce into evidence to the extent permitted under the Rules, materials and information or documents in addition to the information or documents disclosed in response to the discovery demands.

### **DOCUMENT REQUESTS**

#### **Request No. 1**

Representative samples of each of Opposer's AVRA Mark used in connection with each of Opposer's Goods and Services.

#### **RESPONSE TO DOCUMENT REQUEST NO. 1:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically to Applicant's definition of "Opposer's Goods and Services" to the extent that is not limited to Opposer's services as pleaded in the Notice of Opposition. Subject to and without waiving Opposer's general objections, Opposer will produce responsive documents.

#### **Request No. 2**

All documents concerning Opposer's conception, selection, creation, design, and adoption of Opposer's AVRA Mark.



### **RESPONSE TO DOCUMENT REQUEST NO. 2:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Opposer further objects to this Request to the extent that it calls for documents protected from discovery by the attorney client privilege and/or work product doctrine. Subject to and without waiving its objections, Opposer will produce responsive documents, if any.

### **Request No. 3**

All documents concerning any trademark searches, investigations, analyses, studies, or opinion letters conducted or reviewed by or on behalf of Opposer concerning Opposer's AVRA Mark, including but not limited to those conducted or prepared to determine the availability of Opposer's AVRA Mark for adoption, use, and/or registration by Opposer.

### **RESPONSE TO DOCUMENT REQUEST NO. 3:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Opposer further objects to this Request to the extent that it calls for documents protected from discovery by the attorney client privilege and/or work product doctrine. Subject to and without waiving its objections, Opposer will produce responsive documents, if any.

### **Request No. 4**

Documents sufficient to identify: (a) the date of first use of Opposer's AVRA Mark; (b) the geographic scope (including city and state) of use of Opposer's AVRA Mark; (c) any and all customers, distributors, sellers, or third parties to which Opposer's Goods and Services under the AVRA Mark have been sold; (d) the Goods and Services offered or sold under the AVRA Mark; and (e) the amount of sales (in dollars and units) made under Opposer's AVRA Mark, for each year since inception.

### **RESPONSE TO DOCUMENT REQUEST NO. 4:**

Opposer objects to this Request on the grounds that it encompasses more than one question in violation of the Trademark Rules and the TBMP. Opposer further objects to sub-section (c) of

this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections regarding sub-section (a), see the United States Patent & Trademark Office's records for the Opposer's registration and underlying application. Subject to and without waiving its objections regarding sub-section (c), see Opposer's Notice of Opposition which identifies some of Opposer's celebrity clientele. Subject to and without waiving its objections regarding the remaining sub-sections, and pursuant to a protective order in effect according to the TTAB rules, Opposer will produce responsive documents.

**Request No. 5**

All documents concerning the total annual volume of gross sales, by units and dollars, of Opposer's Goods and Services under Opposer's AVRA Mark in the United States or in commerce with the United States, from the date of first use of Opposer's AVRA Mark to the present.

**RESPONSE TO DOCUMENT REQUEST NO. 5:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, and pursuant to a protective order in effect according to the TTAB rules, Opposer will produce responsive documents for attorneys' eyes only (hereinafter "AEO").

**Request No. 6**

Documents sufficient to identify the amount of money expended by Opposer in advertising and promoting Opposer's AVRA Mark in the United States or in commerce with the United States for each year from the date of first use to the present.

**RESPONSE TO DOCUMENT REQUEST NO. 6:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, and pursuant to a protective order in effect according to the TTAB rules, Opposer will produce responsive documents, if any, designated as AEO.

**Request No. 7**

All documents concerning third parties that are using or have used marks containing Opposer's AVRA Mark, in whole or part.

**RESPONSE TO DOCUMENT REQUEST NO. 7:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Opposer further objects to this Request insofar as it is not properly limited to or related to the services of Opposer as set forth in Opposer's Notice of Opposition or the services of Applicant in its subject trademark application. Subject to and without waiving its objections, Opposer will produce responsive documents, if any.

**Request No. 8**

All documents concerning Opposer's grant of authorization or license to use (or proposed authorization or license to use) Opposer's AVRA Mark in the United States or in commerce with the United States to any third party, including but not limited to all license agreements.

**RESPONSE TO DOCUMENT REQUEST NO. 8:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, upon information and belief, there are no responsive documents.

**Request No. 9**

All documents concerning any claims, conflicts, objections, cease and desist or other demands, litigations, trademark oppositions or cancellation proceedings, arbitrations, administrative proceedings or other disputes of any kind in which Opposer has been involved concerning registration or use of Opposer's AVRA Mark.

**RESPONSE TO DOCUMENT REQUEST NO. 9:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Opposer further objects to this Request to the extent that it calls for documents protected from discovery by the attorney

client privilege and/or work product doctrine. Subject to and without waiving its objections, Opposer will produce responsive documents, if any.

**Request No. 10**

All documents concerning the enforcement of Opposer's AVRA Mark by Opposer or its licensees.

**RESPONSE TO DOCUMENT REQUEST NO. 10:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Opposer further objects to this Request to the extent that it calls for documents protected from discovery by the attorney client privilege and/or work product doctrine. Subject to and without waiving its objections, see Opposer's response to Request No. 9.

**Request No. 11**

All documents concerning any market research, focus groups, surveys or other investigation made or commissioned by or on behalf of Opposer concerning Opposer's AVRA Mark.

**RESPONSE TO DOCUMENT REQUEST NO. 11:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, Opposer will produce responsive documents, if any, designated as AEO.

**Request No. 12**

All documents concerning the actual or intended channels of trade for Opposer's Goods or Services sold or intended to be sold in connection with Opposer's AVRA Mark.

**RESPONSE TO DOCUMENT REQUEST NO. 12:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without

waiving its objections, Opposer will produce responsive documents relating to Opposer's restaurants, bars and banquet services for businesses.

**Request No. 13**

Representative specimens of advertising and promotional materials used by Opposer in connection with Opposer's AVRA Mark.

**RESPONSE TO DOCUMENT REQUEST NO. 13:**

Subject to and without waiving Opposer's general objections, Opposer will produce responsive documents.

**Request No. 14**

All documents concerning Applicant and Applicant's AVRA HOSPITALITY & Design Mark, including but not limited to all communications between the parties and all documents concerning Opposer's first knowledge of Applicant's AVRA HOSPITALITY & Design Mark.

**RESPONSE TO DOCUMENT REQUEST NO. 14:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Opposer further objects to this Request to the extent that it calls for documents protected from discovery by the attorney client privilege and/or work product doctrine. Subject to and without waiving its objections, Opposer will produce responsive documents.

**Request No. 15**

All documents concerning any instructions on the manner in which Opposer's AVRA Mark are to be used, including but not limited to any style guides concerning the usage of Opposer's AVRA Mark.

**RESPONSE TO DOCUMENT REQUEST NO. 15:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and not relevant.

**Request No. 16**

All documents concerning the demographics of the customers for Opposer's Goods and Services.

**RESPONSE TO DOCUMENT REQUEST NO. 16:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, Opposer will produce responsive documents, if any, designated as AEO.

**Request No. 17**

All documents concerning the advertising, marketing or promotion of Opposer's Goods and Services marketed or sold in connection with Opposer's AVRA Mark in the United States or U.S. commerce, including but not limited to, samples of each advertisement or promotional piece, any media plans, public relations materials, press kits, correspondence with advertising agencies, public relations firms, media planners, graphic designers, website designers or any other such entities in the advertising and promotional field and documents sufficient to show the advertising and promotional channels used by Opposer to advertise or promote Opposer's Goods and Services offered in connection with Opposer's AVRA Mark.

**RESPONSE TO DOCUMENT REQUEST NO. 17:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome and duplicative. Subject to and without waiving its objections, see Opposer's response to Request No. 9 regarding Opposer's advertising, marketing and promotion of Opposer's services. Opposer will produce responsive documents, if any, regarding the remaining types of documents.

**Request No. 18**

All documents concerning any alleged fame or public recognition of Opposer's AVRA Mark.

**RESPONSE TO DOCUMENT REQUEST NO. 18:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, Opposer will produce responsive documents.

**Request No. 19**

All documents concerning the application and registration of Opposer's AVRA Mark.

**RESPONSE TO DOCUMENT REQUEST NO. 19:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and duplicative. Opposer further objects to this Request to the extent that it calls for documents protected from discovery by the attorney client privilege and/or work product doctrine. Subject to and without waiving its objections, see Opposer's response to Request No. 4.

**Request No. 20**

All documents concerning any agreements to which Opposer is a party concerning the use or registration of Opposer's AVRA Mark, including but not limited to co-existence agreements, license agreements, and settlement agreements.

**RESPONSE TO DOCUMENT REQUEST NO. 20:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, Opposer will produce responsive documents, if any, designated as AEO.

**Request No. 21**

All documents concerning any plans for business expansion that Opposer has for new products or services or for new markets or channels of trade concerning Opposer's Goods and Services or Opposer's AVRA Mark.

**RESPONSE TO DOCUMENT REQUEST NO. 21:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, Opposer will produce responsive documents, if any, designated as AEO.

**Request No. 22**

All documents concerning any communications between Opposer and any third party concerning Applicant, Applicant's AVRA HOSPITALITY & Design Mark, or the instant proceedings.

**RESPONSE TO DOCUMENT REQUEST NO. 22:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad. Opposer further objects to this Request to the extent that it calls for documents protected from discovery by the attorney client privilege and/or work product doctrine. Subject to and without waiving its objections, Opposer will produce responsive documents, if any.

**Request No. 23**

All unsolicited media and third party references concerning Opposer's Goods and Services offered and/or sold in connection with Opposer's AVRA Mark.

**RESPONSE TO DOCUMENT REQUEST NO. 23:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, Opposer will produce responsive documents.

**Request No. 24**

All documents identified or otherwise relied on or referred to by Opposer in responding to Opposer's interrogatories above.

**RESPONSE TO DOCUMENT REQUEST NO. 24:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and that Applicant's Interrogatories exceeded the permissible number. Opposer further objects to this Request to the extent that it calls for documents protected from discovery by the attorney client privilege and/or work product doctrine. Subject to and without waiving its objections, Opposer will produce responsive documents, if any, in response after Applicant has an appropriate number of interrogatories.

**Request No. 25**

All documents concerning any communications between Opposer and any third party, including without limitation licensees, customers, retailers, wholesalers, importers, exporters and distributors, concerning Opposer's AVRA Mark or Opposer's Goods and Services.



**RESPONSE TO DOCUMENT REQUEST NO. 25:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome.

**Request No. 26**

Documents sufficient to show Opposer's document retention policies, document destruction policies, document retention practices and document destruction practices.

**RESPONSE TO DOCUMENT REQUEST NO. 26:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically objects to the extent that it calls for documents protected from discovery by the attorney client privilege and/or work product doctrine. Subject to and without waiving its objections, Opposer will produce responsive documents, if any.

**Request No. 27**

All documents concerning the specimens of use submitted in connection with each of Opposer's AVRA Mark to the United States Patent and Trademark Office.

**RESPONSE TO DOCUMENT REQUEST NO. 27:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome and duplicative. Subject to and without waiving its objections, see Opposer's response to Request No. 4.

**Request No. 28**

All documents concerning marks owned or registered by third parties containing or comprising the term "AVRA" in connection with goods and services identical or related to those the Goods and Services offered by Opposer under Opposer's AVRA Mark.

**RESPONSE TO DOCUMENT REQUEST NO. 28:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad. Subject to and without waiving its objections, Opposer will produce responsive documents, if any.

**Request No. 29**

All documents and things sufficient to fully describe the organization and management structure of Opposer, including but not limited to company organizational charts with lists of parents or subsidiaries, department organizational charts, lists of management members, duties, and responsibilities, and the organizational structure or reporting responsibilities of any or all of Opposer's employees, officers, and agents.

**RESPONSE TO DOCUMENT REQUEST NO. 29:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, see Opposer's Initial Disclosures and TBMP § 414 (2019).

**Request No. 30**

All documents and things to support Opposer's contention that "Opposer has received widespread unsolicited media attention for its restaurants, which have been featured in prominent magazines, newspapers, media and electronic publications" as stated in paragraph 2 of Opposer's Notice of Opposition.

**RESPONSE TO DOCUMENT REQUEST NO. 30:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, see Opposer's response to Request No. 23.

**Request No. 31**

All documents and things to support Opposer's contention that Opposer's Goods and Services and Opposer's AVRA Mark "have long been extensively advertised in a wide range of print and electronic media, on the Internet and have been extensively used in interstate commerce over the last 20 years" as stated in paragraph 12 of Opposer's Notice of Opposition.

**RESPONSE TO DOCUMENT REQUEST NO. 31:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, see Opposer's responses to Request Nos. 13 and 17.

**Request No. 32**

All documents and things to support Opposer's contention that Opposer's AVRA Mark is "famous within the meaning of Section 43(c) of the Lanham Act, as amended 15 U.S.C. § 1125(c)" as stated in paragraph 18 of Opposer's Notice of Opposition.

**RESPONSE TO DOCUMENT REQUEST NO. 32:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, see Opposer's responses to Request Nos. 13 and 17.

**Request No. 33**

All documents and things to support Opposer's contention that Applicant's AVRA HOSPITALITY & Design Mark "appears to have been selected and designed in an attempt to trade on Opposer's famous AVRA® Mark, name and goodwill and would constitute infringement and dilution if so used" as stated in paragraph 25 of Opposer's Notice of Opposition.

**RESPONSE TO DOCUMENT REQUEST NO. 33:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, Opposer will produce documents that display Opposer's unique design font, which utilizes sharp contours for the turns in each letter and different thicknesses compared to the nearly identical font used by Applicant.

**Request No. 34**

All documents and things to support Opposer's contention that "the relatedness of restaurant services and hotel services is well known, since many hotels operate restaurants of the same name" as stated in paragraph 26 of Opposer's Notice of Opposition.

**RESPONSE TO DOCUMENT REQUEST NO. 34:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, Opposer will produce responsive documents.

**Request No. 35**

All documents and things to support Opposer's contention that "the parties' services will presumably be encountered by purchasers in the same channels of trade" as stated in paragraph 27 of Opposer's Notice of Opposition.

**RESPONSE TO DOCUMENT REQUEST NO. 35:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, Opposer will produce responsive documents.

**Request No. 36**

All documents and things to support Opposer's contention that Applicant's use of the AVRA HOSPITALITY & Design Mark is "likely to cause confusion, mistake or deception with consequential injury to Opposer and the public" as stated in paragraph 29 of Opposer's Notice of Opposition.

**RESPONSE TO DOCUMENT REQUEST NO. 36:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, Opposer will produce responsive documents.

**Request No. 37**

All documents and things to support Opposer's contention that "Opposer's Mark has also been used exclusively by Opposer, whether considered for restaurants and bars or even related classes like hotels, hospitality services, or the like" as stated in paragraph 34 of Opposer's Notice of Opposition.

**RESPONSE TO DOCUMENT REQUEST NO. 37:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, Opposer will produce a United States Patent & Trademark Office search in cls. 35, 42 and 43, dated July 26, 2019, that displays only Opposer's and Applicant's AVRA marks.

**Request No. 38**

All documents and things to support Opposer's contention that "Applicant's AVRA HOSPITALITY mark is likely to cause dilution by blurring of Opposer's famous, distinctive and federally-registered AVRA® Mark within the meaning of 15 U.S.C. § 1125(c)" as stated in paragraph 36 of Opposer's Notice of Opposition.

**RESPONSE TO DOCUMENT REQUEST NO. 38:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving its objections, Opposer will produce responsive documents.

**Request No. 39**

All documents and things in support of any other allegation set forth in Opposer's Notice of Opposition.

**RESPONSE TO DOCUMENT REQUEST NO. 39:**

Opposer objects to this Request for the reasons set forth in the General Objections and specifically on the grounds that it is overly broad and unduly burdensome.

Dated: New York, New York  
July 31, 2019

Respectfully submitted,

**PRYOR CASHMAN LLP**

/William Thomashower/  
William Thomashower  
Ryan S. Klarberg  
Kamilah M. Holder  
7 Times Square  
New York, New York 10036  
(212) 421-4100  
[wthomashower@pryorcashman.com](mailto:wthomashower@pryorcashman.com)  
[rklarberg@pryorcashman.com](mailto:rklarberg@pryorcashman.com)  
[kholder@pryorcashman.com](mailto:kholder@pryorcashman.com)  
[tmcketing@pryorcashman.com](mailto:tmcketing@pryorcashman.com)

*Attorneys for Opposer  
48th Restaurant Associates LLC*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application

Serial No. 87/849,410

Mark: AVRA HOSPITALITY

Filing Date: March 26, 2018

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48 <sup>TH</sup> RESTAURANT ASSOCIATES LLC,	:	
	:	
Opposer,	:	
	:	
-against-	:	Opposition No. 91/246,895
	:	
AVRA HOSPITALITY LLC,	:	
	:	
Applicant.	:	
-----	X	

**CERTIFICATE OF SERVICE**

I hereby certify that on July 31, 2019 a true and correct copy of Opposer's Responses to Applicant's First Set of Requests for the Production of Documents have been served on Applicant's attorney of record by e-mail at the following address:

Marcy L Sperry, Esq.  
Sperry IP Law LLC dba Vivid IP  
3 Alliance Center  
3550 Lenox Rd Ne  
21st Floor  
Atlanta, GA, 30326  
[docketing@vividip.com](mailto:docketing@vividip.com)  
[john@vividip.com](mailto:john@vividip.com)  
[marcy@vividip.legal](mailto:marcy@vividip.legal)  
[alex@vividip.legal](mailto:alex@vividip.legal)

\_\_\_\_\_  
/ryan s. klarberg/  
Ryan S. Klarberg

# EXHIBIT J

**From:** [John Brinson](#)  
**To:** [John Brinson](#)  
**Subject:** FW: 48th Restaurant v. Avra Hospitality LLC - Discovery Issues and ACR Status  
**Date:** Tuesday, September 17, 2019 12:08:07 PM  
**Attachments:** [image009.png](#)  
[image012.png](#)  
[image013.png](#)  
[image014.png](#)

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**From:** Marcy Sperry  
**Sent:** Sunday, August 11, 2019 4:32 PM  
**To:** 'Klarberg, Ryan S.' <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>  
**Cc:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>; John Brinson <[john@vividip.com](mailto:john@vividip.com)>; [c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)  
**Subject:** FW: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

Ryan,

Your client's responses to our Requests for Production of Documents were due on July 31, 2019 (which includes the extension). Accordingly, these responses are now almost 2 weeks late.

In addition, after you informed us only days before your client's responses were due to Avra Hospitality's First Set of Interrogatories were due (under the extension), we promptly sent you revised interrogatories (the "Revised Interrogatories") well within the numerical limit. These interrogatories were all included in the original set served on June 17<sup>th</sup> and required absolutely no additional review by your client to respond. As such, we asked that your client serve responses to the Revised Interrogatories by August 7<sup>th</sup>, giving your client an additional week beyond the initial two week extension to service responses.

We ask that your client serve responses to our Revised Interrogatories and Document Requests no later than Wednesday, August 14th. Please confirm that your client will serve responses by this date.

Best regards,

Marcy

---

**From:** Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>  
**Sent:** Wednesday, July 31, 2019 4:44 PM  
**To:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>; Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>; Docketing, TM <[TMDocketing@PRYORCASHMAN.com](mailto:TMDocketing@PRYORCASHMAN.com)>  
**Cc:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>; [c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)  
**Subject:** RE: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents



Ryan,

In an effort to resolve any discovery issues, attached please find a revised set of Interrogatories, where we deleted a couple of Interrogatories and separated the subparts of Interrogatories 1 and 3. Under the current count, there are a total of 34 Interrogatories. Given that all of these Interrogatories were fully encompassed within the set served on July 17, 2019 (which you have had for nearly 44 days), we ask for a response to these Interrogatories by August, 7, 2019.

Warm Regards,  
Alex

Alex Aron  
Senior Counsel

**VIVID IP**  
DARE TO DREAM™

P 404.474.1600 | D 470.851.0872  
[alex@vividip.legal](mailto:alex@vividip.legal)



---

**From:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>  
**Sent:** Monday, July 29, 2019 6:57 PM  
**To:** Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>; Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>; Docketing, TM <[TMDocketing@PRYORCASHMAN.com](mailto:TMDocketing@PRYORCASHMAN.com)>  
**Cc:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>; [c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)  
**Subject:** RE: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

Thanks.

In our review of Applicant's discovery requests, we believe that the number of interrogatories served exceeds the limitation identified in our agreement, which as you know, limited interrogatories to 40 total and document requests to 50 total.

According to TMBP Section 405.03(d), "[i]n determining whether the number of interrogatories served by one party on another exceeds the limit . . . , the Board will count each subpart within an interrogatory as a separate interrogatory, regardless of whether the subpart is separately designated (i.e., separately numbered or lettered)."

By way of examples, Applicant's Interrogatory No. 1 consists of no less than five separate interrogatories, and Interrogatory No. 3 consists of no less than 10 separate interrogatories.

We are willing to discuss our counting methods in an attempt to resolve the dispute over the number of interrogatories and discuss service of a revised set of interrogatories. Alternatively, you may wish you revise the interrogatories on your own to delete a number of interrogatories to meet the agreed-upon 40 interrogatory limit and re-serve.

If necessary, we are available for a phone call to discuss.

Ryan

---

**From:** Alex Aron [<mailto:Alex@vividip.com>]

**Sent:** Monday, July 29, 2019 6:42 PM

**To:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M.

<[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>; Docketing, TM <[TMDocketing@PRYORCASHMAN.com](mailto:TMDocketing@PRYORCASHMAN.com)>;

Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>

**Cc:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>; [c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)

**Subject:** Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

Hi Ryan,

Attached please find Avra Hospitality's objections and responses to 48<sup>th</sup>'s First Set of Interrogatories and Requests for Production of Documents.

Have a nice evening.

Thanks,  
Alex

**Alex Aron**  
Senior Counsel

**VIVID IP**  
DARE TO DREAM™

P 404.474.1600 | D 470.851.0872

3 Alliance Center | 3550 Lenox Road NE, Floor 21 | Atlanta, GA 30326

[alex@vividip.com](mailto:alex@vividip.com)



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# **EXHIBIT K**

**From:** [John Brinson](#)  
**To:** [John Brinson](#)  
**Subject:** FW: 48th Restaurant v. Avra Hospitality LLC - Discovery Issues and ACR Status  
**Date:** Tuesday, September 17, 2019 12:08:59 PM  
**Attachments:** [image009.png](#)  
[image012.png](#)  
[image013.png](#)  
[image014.png](#)

---

**From:** Marcy Sperry [<mailto:marcy@vividip.com>]  
**Sent:** Tuesday, August 13, 2019 12:04 PM  
**To:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>  
**Cc:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>; John Brinson <[john@vividip.com](mailto:john@vividip.com)>; 'c44b05b91+matter1158325579@maildrop.clio.com' <[c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)>  
**Subject:** RE: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

Ryan,

I just left you a voicemail asking whether you client will be serving response to our discovery requests. Your client's responses to the document requests are now 13 days late and your responses to the interrogatories are also late. We ask that you respond today and advise whether you will be serving responses this week. This is our final good faith attempt to resolve this issue before having to resort to filing a motion to compel.

Best regards,

Marcy

---

**From:** Marcy Sperry  
**Sent:** Sunday, August 11, 2019 4:32 PM  
**To:** 'Klarberg, Ryan S.' <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>  
**Cc:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>; John Brinson <[john@vividip.com](mailto:john@vividip.com)>; [c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)  
**Subject:** FW: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

Ryan,

Your client's responses to our Requests for Production of Documents were due on July 31, 2019 (which includes the extension). Accordingly, these responses are now almost 2 weeks late.

In addition, after you informed us only days before your client's responses were due to Avra Hospitality's First Set of Interrogatories were due (under the extension), we promptly sent you

revised interrogatories (the “Revised Interrogatories”) well within the numerical limit. These interrogatories were all included in the original set served on June 17<sup>th</sup> and required absolutely no additional review by your client to respond. As such, we asked that your client serve responses to the Revised Interrogatories by August 7<sup>th</sup>, giving your client an additional week beyond the initial two week extension to service responses.

We ask that your client serve responses to our Revised Interrogatories and Document Requests no later than Wednesday, August 14th. Please confirm that your client will serve responses by this date.

Best regards,

Marcy

---

**From:** Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>

**Sent:** Wednesday, July 31, 2019 4:44 PM

**To:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>; Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>; Docketing, TM <[TMDocketing@PRYORCASHMAN.com](mailto:TMDocketing@PRYORCASHMAN.com)>

**Cc:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>; [c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)

**Subject:** RE: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

Ryan,

In an effort to resolve any discovery issues, attached please find a revised set of Interrogatories, where we deleted a couple of Interrogatories and separated the subparts of Interrogatories 1 and 3. Under the current count, there are a total of 34 Interrogatories. Given that all of these Interrogatories were fully encompassed within the set served on July 17, 2019 (which you have had for nearly 44 days), we ask for a response to these Interrogatories by August, 7, 2019.

Warm Regards,  
Alex

**Alex Aron**  
Senior Counsel

**VIVID IP**  
DARE TO DREAM™

P 404.474.1600 | D 470.851.0872  
[alex@vividip.legal](mailto:alex@vividip.legal)



---

**From:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>  
**Sent:** Monday, July 29, 2019 6:57 PM  
**To:** Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>; Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>; Docketing, TM <[TMDocketing@PRYORCASHMAN.com](mailto:TMDocketing@PRYORCASHMAN.com)>  
**Cc:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>; [c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)  
**Subject:** RE: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

Thanks.

In our review of Applicant's discovery requests, we believe that the number of interrogatories served exceeds the limitation identified in our agreement, which as you know, limited interrogatories to 40 total and document requests to 50 total.

According to TMBP Section 405.03(d), "[i]n determining whether the number of interrogatories served by one party on another exceeds the limit . . . , the Board will count each subpart within an interrogatory as a separate interrogatory, regardless of whether the subpart is separately designated (i.e., separately numbered or lettered)."

By way of examples, Applicant's Interrogatory No. 1 consists of no less than five separate interrogatories, and Interrogatory No. 3 consists of no less than 10 separate interrogatories.

We are willing to discuss our counting methods in an attempt to resolve the dispute over the number of interrogatories and discuss service of a revised set of interrogatories. Alternatively, you may wish you revise the interrogatories on your own to delete a number of interrogatories to meet the agreed-upon 40 interrogatory limit and re-serve.

If necessary, we are available for a phone call to discuss.

Ryan

---

**From:** Alex Aron [<mailto:Alex@vividip.com>]  
**Sent:** Monday, July 29, 2019 6:42 PM  
**To:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>; Docketing, TM <[TMDocketing@PRYORCASHMAN.com](mailto:TMDocketing@PRYORCASHMAN.com)>; Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>  
**Cc:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>; [c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)  
**Subject:** Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

Hi Ryan,

Attached please find Avra Hospitality's objections and responses to 48<sup>th</sup>'s First Set of Interrogatories

and Requests for Production of Documents.

Have a nice evening.

Thanks,  
Alex

**Alex Aron**  
Senior Counsel



**P** 404.474.1600 | **D** 470.851.0872  
3 Alliance Center | 3550 Lenox Road NE, Floor 21 | Atlanta, GA 30326

[alex@vividip.com](mailto:alex@vividip.com)



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# **EXHIBIT L**

**From:** [Klarberg, Ryan S.](#)  
**To:** [Marcy Sperry](#)  
**Cc:** [Thomashower, William](#); [Alex Aron](#); [John Brinson](#); "[c44b05b91+matter1158325579@maildrop.clio.com](#)"; [Holder, Kamilah M.](#)  
**Subject:** RE: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents  
**Date:** Tuesday, August 13, 2019 2:24:38 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[RE 48th Restaurant Associates v. Avra Hospitality - Opp. No. 91246895.msg](#)  
[Opposer's Objections and Responses to Requests for Documents - 7.31.19.pdf](#)

---

Marcy,

We served Opposer's Responses and Objections to Applicant's First Set of Requests for the Production of Documents on July 31, 2019 (the "Responses") – for ease of reference, please see our attached e-mail from July 31<sup>st</sup> and the corresponding Responses attached thereto. We plan on making an initial document production shortly.

We are not aware of Applicant producing any documents to date. Please let us know when we can expect to receive Applicant's production.

Regarding Applicant's revised interrogatories served on July 31, 2019, Opposer's responses are due on August 30, 2019 (i.e. 30 days after the date of service of the revised interrogatories). Nevertheless, we are comparing Applicant's revised interrogatories to the original interrogatories and expect to serve Opposer's responses before August 30.

---

**From:** Marcy Sperry [mailto:[marcy@vividip.com](mailto:marcy@vividip.com)]  
**Sent:** Tuesday, August 13, 2019 12:04 PM  
**To:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>  
**Cc:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>; John Brinson <[john@vividip.com](mailto:john@vividip.com)>; '[c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)' <[c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)>  
**Subject:** RE: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

Ryan,

I just left you a voicemail asking whether you client will be serving response to our discovery requests. Your client's responses to the document requests are now 13 days late and your responses to the interrogatories are also late. We ask that you respond today and advise whether you will be serving responses this week. This is our final good faith attempt to resolve this issue before having to resort to filing a motion to compel.

Best regards,

Marcy

---

**From:** Marcy Sperry

**Sent:** Sunday, August 11, 2019 4:32 PM

**To:** 'Klarberg, Ryan S.' <RKlarberg@PRYORCASHMAN.com>

**Cc:** Thomashower, William <WThomashower@PRYORCASHMAN.com>; Alex Aron

<Alex@vividip.com>; John Brinson <john@vividip.com>;

c44b05b91+matter1158325579@maildrop.clio.com

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Your client's responses to our Requests for Production of Documents were due on July 31, 2019 (which includes the extension). Accordingly, these responses are now almost 2 weeks late.

In addition, after you informed us only days before your client's responses were due to Avra Hospitality's First Set of Interrogatories were due (under the extension), we promptly sent you revised interrogatories (the "Revised Interrogatories") well within the numerical limit. These interrogatories were all included in the original set served on June 17<sup>th</sup> and required absolutely no additional review by your client to respond. As such, we asked that your client serve responses to the Revised Interrogatories by August 7<sup>th</sup>, giving your client an additional week beyond the initial two week extension to service responses.

We ask that your client serve responses to our Revised Interrogatories and Document Requests no later than Wednesday, August 14th. Please confirm that your client will serve responses by this date.

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Marcy

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**Sent:** Wednesday, July 31, 2019 4:44 PM

**To:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>; Thomashower, William

<[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>;

Docketing, TM <[TMDocketing@PRYORCASHMAN.com](mailto:TMDocketing@PRYORCASHMAN.com)>

**Cc:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>; [c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)

**Subject:** RE: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

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Warm Regards,  
Alex

Alex Aron  
Senior Counsel



P 404.474.1600 | D 470.851.0872  
[alex@vividip.legal](mailto:alex@vividip.legal)



---

**From:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>  
**Sent:** Monday, July 29, 2019 6:57 PM  
**To:** Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>; Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>; Docketing, TM <[TMDocketing@PRYORCASHMAN.com](mailto:TMDocketing@PRYORCASHMAN.com)>  
**Cc:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>; [c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)  
**Subject:** RE: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

Thanks.

In our review of Applicant's discovery requests, we believe that the number of interrogatories served exceeds the limitation identified in our agreement, which as you know, limited interrogatories to 40 total and document requests to 50 total.

According to TMBP Section 405.03(d), "[i]n determining whether the number of interrogatories served by one party on another exceeds the limit . . . , the Board will count each subpart within an interrogatory as a separate interrogatory, regardless of whether the subpart is separately designated (i.e., separately numbered or lettered)."

By way of examples, Applicant's Interrogatory No. 1 consists of no less than five separate interrogatories, and Interrogatory No. 3 consists of no less than 10 separate interrogatories.

We are willing to discuss our counting methods in an attempt to resolve the dispute over the number of interrogatories and discuss service of a revised set of interrogatories. Alternatively, you

may wish you revise the interrogatories on your own to delete a number of interrogatories to meet the agreed-upon 40 interrogatory limit and re-serve.

If necessary, we are available for a phone call to discuss.

Ryan

---

**From:** Alex Aron [<mailto:Alex@vividip.com>]

**Sent:** Monday, July 29, 2019 6:42 PM

**To:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>; Docketing, TM <[TMDocketing@PRYORCASHMAN.com](mailto:TMDocketing@PRYORCASHMAN.com)>; Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>

**Cc:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>; [c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)

**Subject:** Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

Hi Ryan,

Attached please find Avra Hospitality's objections and responses to 48<sup>th</sup>'s First Set of Interrogatories and Requests for Production of Documents.

Have a nice evening.

Thanks,  
Alex

**Alex Aron**  
Senior Counsel

**VIVID IP**  
DARE TO DREAM™

P 404.474.1600 | D 470.851.0872

3 Alliance Center | 3550 Lenox Road NE, Floor 21 | Atlanta, GA 30326

[alex@vividip.com](mailto:alex@vividip.com)



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# **EXHIBIT M**



**From:** [John Brinson](#)  
**To:** [wthomashower@pryorcashman.com](mailto:wthomashower@pryorcashman.com); [Klarberg, Ryan S.](#); [kholder@pryorcashman.com](mailto:kholder@pryorcashman.com)  
**Cc:** [Alex Aron](#); [Marcy Sperry](#); [c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)  
**Subject:** 48th Restaurant v. Avra Hospitality | Avra Hospitality Document Production  
**Date:** Wednesday, August 14, 2019 3:03:00 PM  
**Attachments:** [image003.png](#)

---

All,

Good afternoon. In connection with Avra Hospitality's document production, we have just shared two folders via Clio Connect with each of you. A notice from [notifications@clio.com](mailto:notifications@clio.com) should be arriving in your inbox shortly for each folder that provides step-by-step instructions on how to access these documents. Please note that due to the email address, it is possible that these notifications have gone to your junk mail. If you have any questions regarding these notifications, please contact me immediately (my direct line is listed below).

Additionally, we will be providing a Privilege Log in due course.

Best Regards,

**John Brinson**  
Paralegal

**VIVID IP**  
DARE TO DREAM™

**P** 404.474.1600 | **D** 470.851.0865  
3 Alliance Center | 3550 Lenox Road NE, Floor 21 | Atlanta, GA 30326  
[john@vividip.com](mailto:john@vividip.com)

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# **EXHIBIT N**

**From:** [Klarberg, Ryan S.](#)  
**To:** [Marcy Sperry](#)  
**Cc:** [Thomashower, William](#); [Alex Aron](#); [John Brinson](#); "[c44b05b91+matter1158325579@maildrop.clio.com](#)"; [Holder, Kamilah M.](#)  
**Subject:** RE: 48th Restaurant v. Avra Hospitality LLC - Discovery Issues and ACR Status  
**Date:** Wednesday, August 14, 2019 4:28:42 PM  
**Attachments:** [image006.png](#)  
[image008.png](#)  
[image009.png](#)  
[image011.png](#)  
[image012.png](#)  
[image013.png](#)  
[image014.png](#)

---

Marcy,

We plan on producing responsive, non-privileged documents on or before August 23.

---

**From:** Marcy Sperry [mailto:[marcy@vividip.com](mailto:marcy@vividip.com)]  
**Sent:** Tuesday, August 13, 2019 3:47 PM  
**To:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>  
**Cc:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>; John Brinson <[john@vividip.com](mailto:john@vividip.com)>; '[c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)' <[c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)>; Holder, Kamilah M. <[KHolder@PRYORCASHMAN.com](mailto:KHolder@PRYORCASHMAN.com)>  
**Subject:** RE: 48th Restaurant v. Avra Hospitality LLC - Discovery Issues and ACR Status

Ryan,

My sincere apologies for the confusion as I somehow missed that attachment containing your client's Responses to Interrogatories.

In our Responses to Opposer's Requests for Production of Documents ("RPD's"), we specifically stated that we would produce documents by tomorrow, August 14<sup>th</sup>. To that end, we will be producing documents tomorrow by sending you a link to a shared folder you can access through Clio, our document management software, containing the responsive documents.

Your client's Responses to our client's RPD's do not specify a date of production. Such a vague response is no longer acceptable as the Federal Rules of Civil Procedure now require your client to specify an actual date in its responses upon which it will produce documents. "The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response." FRCP 34(b)(2)(B) (emphasis added). Accordingly, we ask that you provide us with a specific date upon which your client will produce its documents as required by FRCP 34.

We again underscore the fact that your client had every single Interrogatory in our revised set when we served the initial Interrogatories nearly two months ago. Accordingly, as a matter of good faith, we ask that your client serve these responses ASAP since there is no reason for them to take an

additional 30 days when they had these interrogatories for nearly two months.

Finally, when do you expect to respond to the final edits we have to the attached ACR document? We would like to move forward with filing this soon given the approaching deadlines set forth in the ACR schedule.

Best regards,

Marcy

**Marcy L. Sperry**  
Founding Partner

**VIVID IP**  
DARE TO DREAM™

P 404.474.1600 | D 470.851.0871

3 Alliance Center | 3550 Lenox Road NE, Floor 21 | Atlanta, GA 30326

[marcy@vividip.com](mailto:marcy@vividip.com)



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---

**From:** Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>

**Sent:** Tuesday, August 13, 2019 2:24 PM

**To:** Marcy Sperry <marcy@vividip.com>

**Cc:** Thomashower, William <WThomashower@PRYORCASHMAN.com>; Alex Aron

<Alex@vividip.com>; John Brinson <john@vividip.com>;

'c44b05b91+matter1158325579@maildrop.clio.com'

<c44b05b91+matter1158325579@maildrop.clio.com>; Holder, Kamilah M.

<KHolder@PRYORCASHMAN.com>

**Subject:** RE: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories and Requests for Production of Documents

Marcy,

We served Opposer's Responses and Objections to Applicant's First Set of Requests for the Production of Documents on July 31, 2019 (the "Responses") – for ease of reference, please see our attached e-mail from July 31<sup>st</sup> and the corresponding Responses attached thereto. We plan on making an initial document production shortly.

We are not aware of Applicant producing any documents to date. Please let us know when we can expect to receive Applicant's production.

Regarding Applicant's revised interrogatories served on July 31, 2019, Opposer's responses are due on August 30, 2019 (i.e. 30 days after the date of service of the revised interrogatories). Nevertheless, we are comparing Applicant's revised interrogatories to the original interrogatories and expect to serve Opposer's responses before August 30.

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**From:** Marcy Sperry [<mailto:marcy@vividip.com>]

**Sent:** Tuesday, August 13, 2019 12:04 PM

**To:** Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>

**Cc:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Alex Aron

<[Alex@vividip.com](mailto:Alex@vividip.com)>; John Brinson <[john@vividip.com](mailto:john@vividip.com)>;

'c44b05b91+matter1158325579@maildrop.clio.com'

<[c44b05b91+matter1158325579@maildrop.clio.com](mailto:c44b05b91+matter1158325579@maildrop.clio.com)>

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**To:** 'Klarberg, Ryan S.' <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>

**Cc:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>; Alex Aron

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**Subject:** FW: Avra Hospitality LLC's Objections and Responses to 48th's First Set of Interrogatories

# EXHIBIT O

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

48th RESTAURANT ASSOCIATES LLC

Plaintiff,

- against -

AVRA HOSPITALITY LLC,  
ANDREW CHAFOULIAS, and  
MIKI RADOVANOVIC

Defendants.

Civil Action No. 19-cv-7708

**COMPLAINT**

Plaintiff 48th Restaurant Associates LLC (“Plaintiff”), by its attorneys Pryor Cashman LLP, alleges as follows against defendants Avra Hospitality LLC (“Avra Hospitality”), Andrew Chafoulias (“Chafoulias”), and Miki Radovanovic (“Radovanovic”) (collectively, “Defendants”):

**NATURE OF ACTION**

1. This is an action for trademark infringement, unfair competition arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and for unfair competition and dilution under New York State law, as more fully described below. This action seeks damages and injunctive relief to halt Defendants’ willful trademark infringement, unfair competition and dilution, occurring and causing harm to Plaintiff in this District and elsewhere. After Defendants had direct knowledge of Plaintiff’s famous registered trademark AVRA® U.S. Reg. 2,493,466 for restaurants, and Plaintiff’s specific objections to Defendants’ proposed use of the term AVRA HOSPITALITY for

hotels and hotel management services, Defendants in or about June 2019 commenced unauthorized use in commerce of the term AVRA HOSPITALITY for business management of hotel services and staffing hotel restaurants. This ongoing infringement is causing irreparable harm to Plaintiff and its reputation.

2. For more than 20 years, Plaintiff has owned and operated highly unique, successful upscale restaurants and bars under its federally registered trademark, AVRA®. Plaintiff's first AVRA® restaurant opened in 1999 at 141 East 48<sup>th</sup> Street in New York City. Since then, Plaintiff has expanded its AVRA® brand restaurants and bars to two additional venues, on Madison Avenue in New York City and in Beverly Hills, California.

3. In disregard of Plaintiff's prior trademark registration and long-standing common law use of the AVRA® trademark, Defendant Avra Hospitality filed two "intent to use" U.S. trademark applications for virtually the same mark, AVRA HOSPITALITY, for hotel services and business management of hotels services, as Serial Nos. 87/717,456 (word mark) and 87/849,410 (word and design mark). Neither application reached registration and on March 11, 2019, Plaintiff, as Opposer, filed opposition in the United States Patent and Trademark Office, to the application Serial No. 87/849,410 for the AVRA HOSPITALITY word and design mark. The Notice of Opposition set forth in great detail the grounds for Plaintiff's objection to the application and the likelihood of confusion if Defendant Avra Hospitality were permitted to register its mark. Said Opposition is pending as No. 91246895. Thus, whatever, Defendants' original belief as to the similarity of the parties' marks and services, as of March 11, 2019, Defendants well knew of Plaintiff's objection and claims of likelihood of confusion as between Plaintiff's mark AVRA®, long previously used and registered, and Defendants' proposed mark, AVRA HOSPITALITY.



4. Despite Defendants' explicit knowledge of Plaintiff's objections to Defendants' intended use and proposed registration of the mark AVRA HOSPITALITY, in or about June 2019, Defendants commenced actual use of the AVRA HOSPITALITY mark for business management of hotels and a variation using "AVRA" as a stand-alone mark, including when referencing dining and beverage services. Defendant Avra Hospitality then filed a Statement of Use for AVRA HOSPITALITY in its word mark application Serial No. 87/717,456 on July 31, 2019, seeking to complete the registration with full knowledge of Plaintiff's objections. If that application is not withdrawn, Plaintiff intends to file a Cancellation Proceeding if the mark is allowed to register.

5. Defendants have thus commenced willful infringement of Plaintiff's Mark with full knowledge of same and of the grounds for Plaintiff's opposition based on likelihood of confusion of the parties' respective marks and services. Accordingly, Plaintiff was compelled to bring this infringement action to halt such use and applications, and obtain damages and injunctive relief.

### **PARTIES**

6. Plaintiff 48th Restaurant Associates LLC (as defined above, "Plaintiff") is a limited liability company organized and existing under the laws of the State of New York with a principal place of business at 1350 Avenue of the Americas, New York, New York 10019.

7. Upon information and belief, Defendant Avra Hospitality LLC (as defined above, "Avra Hospitality") is a limited liability company organized under the laws of Minnesota with an address of 30 3rd Street SE, #600, Rochester, MN 55094. Upon information and belief, Avra Hospitality is owned or controlled by Defendant Andrew "Andy" Chafoulias (as defined above, "Chafoulias"), its Chief Executive Officer, and Defendant Miki Radovanovic (as defined above, "Radovanovic"), its Chief Operating Officer. Upon information and belief, both Chafoulias and Radovanovic have business addresses in Rochester, MN. Upon information and belief, Chafoulias

and Radovanovic are the moving, active and conscious forces behind Defendant Avra Hospitality's choice of its name and the willful infringement of Plaintiff's Mark.

**JURISDICTION AND VENUE**

8. This case is a civil action arising under the Lanham Act, 15 U.S.C. § 1051, *et seq.* This Court has subject matter jurisdiction over the claims in this Complaint that relate to trademark infringement and unfair competition pursuant to 15 U.S.C. §§ 1114, 1121, 1125(a), 28 U.S.C. §§ 1331, 1338, 1367, and principles of supplemental jurisdiction.

9. This Court has supplemental jurisdiction over the claims in this Complaint that arise under the common law of the State of New York pursuant to 28 U.S.C. § 1367(a), because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

10. This Court has personal jurisdiction over Defendants because, upon information and belief, Defendants have committed infringing acts outside of New York causing injury to Plaintiff in New York, and Defendants regularly do or solicit business in New York, have directed their business efforts into New York and expect or reasonably should expect their infringing conduct to have consequences in New York and derive substantial revenue from interstate commerce. These activities fall within the long-arm statute for personal jurisdiction in the State of New York, C.P.L.R. §§ 301 and 302(a).

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants' acts are causing confusion of the public and injury to Plaintiff, or a likelihood such confusion and injury, within this District and elsewhere.

**FACTS COMMON TO ALL CLAIMS FOR RELIEF**

**I. Plaintiff and its Successful, AVRA® Restaurants**

12. For over 20 years, Plaintiff has used its famous and federally registered AVRA® trademark (the “Mark”) in connection with its AVRA® restaurants and bars in New York City, the first of which opened in 1999. Plaintiff’s AVRA® Mark is arbitrary and inherently distinctive for Plaintiff’s services of restaurants and bars.

13. Plaintiff’s business under the AVRA® Mark has been successful and expanding. Most recently, in April 2018, Plaintiff opened a new AVRA® restaurant and bar in Beverly Hills, California.

14. Plaintiff owns United States trademark registration U.S. Reg. No. 2,493,466, which was registered on the Principal Register on September 25, 2001, for the mark AVRA® for restaurant services.

15. A true and correct copy of Plaintiff’s valid and subsisting U.S. trademark registration for the AVRA® Mark, along with a copy of a USPTO TSDR printout showing Plaintiff’s registration for the Mark and Plaintiff as current owner, are annexed hereto as group **Exhibit A**.

16. Plaintiff’s registration and rights in the Mark are valid, subsisting and have become incontestable pursuant to 15 U.S.C. § 1065. Pursuant to 15 U.S.C. § 1115(b), Plaintiff’s Certificate of Registration constitutes conclusive evidence of the validity of the registered Mark and of Plaintiff’s exclusive right to use the AVRA® Mark in commerce in connection with restaurant services.

17. Moreover, Plaintiff's common law use of its Mark has for decades included a unique design font, using sharp contours for the turns in each letter and different thicknesses, as shown on its menus, advertising and websites as follows:



18. Plaintiff's AVRA® restaurants have provided millions of customers with a chic and high-quality dining experience, one known for its exotic decor, outstanding cuisine from award-winning executive chefs, and excellent service. In over 20 years, Plaintiff has served in excess of 3.5 million customers under its AVRA® Mark. In addition, Plaintiff's banquet services are marketed and sold to businesses to provide upscale banquets and parties for business events.

19. Plaintiff has invested millions of dollars to create, market, and advertise its AVRA® restaurants. The AVRA® restaurants combine innovative ambience, themes, decorations, luxurious and exotic interior design with live trees and sculptures, and an outstanding menu and service.

20. The design of the first AVRA® restaurant at 141 East 48th Street in Manhattan evokes a Villa in Greece, by creating an authentic, cozy Mediterranean atmosphere with imported limestone and distressed wood floors, stone washed walls, exposed wood beams, and French doors that open to a beautiful flowered courtyard. An open kitchen shows the preparation of a magnificent fresh fish display.

21. The design of the second New York City AVRA® restaurant at 14 East 60th Street is a bi-level venue that features a reflecting pool on the lower floor, a split-face stone feature wall manufactured from blocks at a Greek quarry, lemon trees at the entrance, and two custom wall-

mounted sculptures by artist Fernando Mastrangelo in the main dining room. These designs were developed by the award-winning New York City design firm Rockwell Group.

22. The design of the Beverly Hills AVRA® restaurant, also by Rockwell Group, includes sculpted drapes, a 1,500-pound wall sculpture, lemon trees in the dining room, and high ceilings with a skylight.

23. Plaintiff currently operates the dedicated websites <http://avrany.com> and <http://avrabeverlyhills.com>, which feature current menus, photographs, and online reservation systems.

24. The AVRA® Mark and restaurants have long been extensively advertised in a wide range of print and electronic media, and have been extensively used in interstate commerce over the last 20 years. Additionally, Plaintiff has received widespread, unsolicited media attention for its restaurants, which have been featured in prominent magazines, newspapers, media and electronic publications including the well-known Zagat® restaurant guide.

25. A compilation of true and correct copies of certain of Plaintiff's trademark uses of the AVRA® Mark is annexed hereto as group **Exhibit B**.

26. Plaintiff has achieved great success under its AVRA® Mark, with millions of dollars in annual revenue and millions of guests served since operations started more than 20 years ago.

27. Plaintiff's AVRA® restaurants attract a patronage that includes celebrities, professional athletes, financial and business leaders, and politicians, in addition to local residents and guests from foreign countries. Its AVRA® New York City restaurants have achieved a reputation as one of the most popular restaurants in Manhattan, with famous patronage that

includes A-listers, such as Tony Bennett, Woody Allen, Alexander Wang, Leonardo DiCaprio, Naomi Campbell, Al Pacino, and many more.

28. Likewise, Plaintiff's AVRA® restaurant in Beverly Hills has quickly achieved a reputation as a popular and successful restaurant drawing thousands of patrons. Celebrity guests have included Halle Berry, Cindy Crawford and Rande Gerber, Ellen Pompeo, Selma Blair, Nicole Scherzinger, Anthony Mackie and Michael Chiklis, among others.

29. Plaintiff's AVRA® Mark is widely recognized by the general consuming public and businesses, due to the great success and popularity of its restaurants and bars on both the East and West coasts, and to the patronage by high-profile celebrities and media coverage. By virtue of the aforesaid success, advertising and promotion, Plaintiff's Mark is now famous and widely known by the public, restaurant patrons, businesses, the restaurant industry, the media and others, who have come to identify the AVRA® Mark as indicating the single source of quality facilities, products and services offered by Plaintiff.

30. By reason of the foregoing, the AVRA® Mark used by Plaintiff in interstate commerce has come to enjoy a favored reputation and to create recognition of Plaintiff's restaurants and services and has obtained a secondary and distinctive meaning to identify Plaintiff as the sole source of AVRA® services and to distinguish Plaintiff's services from others. Plaintiff's AVRA® Mark has come to represent and symbolize extremely valuable goodwill belonging exclusively to Plaintiff.

31. By reason of the foregoing and over 20 years of exclusive and successful use of the AVRA® Mark, Plaintiff has extensive common law rights in and to the AVRA® Mark as a source identifier of Plaintiff's services.

**II. Defendants Apply to Register the Infringing AVRA HOSPITALITY Mark**

32. Upon information and belief, Defendants became aware of Plaintiff's AVRA® Mark in or about December 2017, if not earlier, in connection with AVRA HOSPITALITY'S aforesaid U.S. trademark application.

33. Upon information and belief, Defendant Chafoulias personally selected the infringing mark AVRA HOSPITALITY, and he and Defendant Radovanovic subsequently adopted said infringing mark, for use in connection with Defendant Avra Hospitality's services.

34. Notwithstanding such knowledge, and notwithstanding Plaintiff's prior trademark registration of and prior rights in the AVRA® Mark, on December 12, 2017, and March 26, 2018, Defendant Avra Hospitality filed two intent-to-use U.S. trademark applications, respectively U.S. Application Serial Nos. 87/717,456 (word mark) for "Hotel services" (Class 43) and "Business management of hotel properties" (Class 35) and 87/849,410 (word and design mark) for the mark AVRA HOSPITALITY in design for "Hotel services" (Class 43) and " and "Business Management of hotel services" (Class 35) (the "Applications").

35. Plaintiff has continuously and exclusively used the AVRA® Mark in connection with its services long prior to the date upon which Defendant Avra Hospitality filed the Applications. Plaintiff's registration date is also long prior to Defendant Avra Hospitality's application dates. As such, Plaintiff has priority.

36. Plaintiff's AVRA® Mark is the virtually the same as the infringing AVRA HOSPITALITY Mark in sight, sound and connotation, and they create the same commercial impression. Other than the word "HOSPITALITY" (which Defendant Avra Hospitality has disclaimed in its Applications), the parties' marks are identical in the use of the arbitrary and

distinctive word “AVRA” which is dominant in both marks. Defendants have also commenced use of the plain word “AVRA” which is identical to Plaintiffs’ Mark.

37. In addition, the font and design of the word AVRA in the infringing AVRA HOSPITALITY mark, which Defendant Avra Hospitality describes in its word and design mark Application as a line “extend[ing] partially through the letters ‘A,’ ‘V,’ ‘R,’ and ‘A[,]”” bears a striking resemblance to Plaintiff’s common law use of its AVRA Mark as used at its restaurants and bars, both in the fonts and the appearance. Each of the letters in the infringing mark also uses the same sharp contours for the turns in the letters as found in Plaintiff’s common law AVRA Mark design. Defendants’ wavy lines through the letters further simulate the appearance of Plaintiff’s Mark. This similarity is apparent between the two marks, as shown below:



38. Defendants’ use of the identical arbitrary word AVRA and the adoption of similar font and design are striking. Particularly given Plaintiff’s registration, decades of national fame and widespread use, Defendants’ selection of the mark AVRA HOSPITALITY at the time Avra Hospitality filed its intent-to use application appears to be an attempt to trade on Plaintiff’s famous AVRA® Mark, name and goodwill.



39. The AVRA HOSPITALITY mark was applied for and is now being used in connection with services that are closely related and complementary to the restaurant services for which Plaintiff's Mark is registered and the restaurant and bar services for which Plaintiff has long-standing prior common law rights. Specifically, the relatedness of restaurant services and hotel services is well known. Both are within the hospitality industry and, in fact, many hotels operate restaurants of the same name or, at the very least, have restaurants operating on premises. Further, third-party trademark registrations often include both hotel and restaurant and bar services under the same mark. Thus, persons encountering the respective marks for the respective services are likely to believe that they originate from the same source or that there is some association between the sources.

40. On October 11, 2018, Plaintiff filed a request to extend the time to oppose Defendant Avra Hospitality's word and design mark trademark application for AVRA HOSPITALITY. Thus, Defendants, including, upon information and belief, Defendants Chafoulis and Radovanovic by virtue of their personal involvement with Defendant AVRA HOSPITALITY and with the United States Patent and Trademark Office proceedings, became aware of Plaintiff's objections to the intended use of AVRA HOSPITALITY at least as early as October 11, 2018.

41. On March 11, 2019, Plaintiff filed a notice of opposition to Defendant Avra Hospitality's word and design mark trademark application. Avra Hospitality answered on April 22, 2019. That proceeding is currently pending before the Trademark Trial and Appeal Board of the United States Patent and Trademark Office (Opposition number 91246895).

42. On or about July 31, 2019, Defendant Avra Hospitality requested that the United States Patent and Trademark Office delete "Hotel services" from its word mark Application Serial

No. 87/717,456 in an apparent concession that such services are highly similar to those Plaintiff provides and thus would increase the likelihood of confusion between the marks. However, such deletion does not avoid likelihood of confusion, since the services intended to be and now actually provided in Class 35 for “business management of hotel properties” are closely related and complementary to the restaurant and bar services under Plaintiff’s AVRA® Mark.

### **III. Defendants Commence Actual Use of the Infringing Mark**

43. Despite the pendency of Plaintiff’s opposition proceeding against Avra Hospitality’s intent-to-use trademark application, Defendants willfully and brazenly commenced actual use of the AVRA HOSPITALITY mark in or around June 2019. Worse yet, Defendants have begun using the standalone term, AVRA, in connection with Avra Hospitality’s hotel management services.

44. Specifically, the Avra Hospitality website is now live, at the URL [www.avrahospitality.com](http://www.avrahospitality.com). On that website, Defendants frequently refer to Avra Hospitality’s brand as the standalone term “Avra” – *i.e.*, a term indistinguishable from Plaintiff’s AVRA® Mark. The website is soliciting in this District and elsewhere with a section on its website called “Contact Us” for viewers to fill out and submit their name, email address, phone and a message online.

45. Defendants state on the Avra Hospitality website that “Avra manages a diverse portfolio of properties from premium-name brands to well-loved luxury boutique hotels” and that it provides a “Modern Approach to Hospitality & Hotel Management.” The [avrahospitality.com](http://avrahospitality.com) website is registered to “michelle.milde@hilton.com” who upon information and belief, in addition to having a Hilton.com email address is also a marketing manager for Defendant AVRA Hospitality. Defendants indicate on the website that Avra Hospitality presently manages at least

three Hilton-branded hotels in Minnesota and, in a national expansion, an inn called “Inn at Harbor Hill Marina” in the tri-state area, near New London, Connecticut.

46. Avra Hospitality has also become active on social media. On its Facebook accounts, LinkedIn accounts, and elsewhere, Avra Hospitality has listed a host of new job opportunities for hotel employee positions, including those relating to restaurants, showing Defendants’ expansion of the scope of its services and close relatedness to Plaintiff’s restaurant and bars services.

47. Certain of Defendants’ online uses of its infringing mark are particularly likely to exacerbate confusion with Plaintiff’s AVRA® Mark.

48. For example, Avra Hospitality has now advertised a number of “Avra Job Opportunities” (again adopting AVRA as a standalone mark) in the “Kitchen” and “Banquets” services categories, including positions for “Lobby Bartender” and “Banquet Server.” On its Facebook account, Avra Hospitality also recently posted images of a man (believed to be Defendant Radovanovic) cooking while wearing a chef’s outfit that prominently displays the infringing AVRA HOSPITALITY mark:



49. In its online use of the infringing AVRA HOSPITALITY mark, Avra Hospitality has often presented its mark with the following design elements, which are the same as its applied-for mark:



50. Defendants' infringing AVRA HOSPITALITY mark is also prominently displayed on the website of the Connecticut property Avra Hospitality manages, The Inn at Harbor Hill Marina (the "Connecticut Inn"), a property that is located within easy travelling distance from New York and that regularly attracts visitors from New York. The Connecticut Inn website

www.innharborhill.com states, “Managed By Avra Hospitality” on every page and is fully interactive, offering rooms, travel packages, contact information, and booking pages with the ability to make online reservations, under the AVRA HOSPITALITY mark. The infringing AVRA HOSPITALITY mark is prominently displayed on the site’s online booking webpages as users make reservations.

51. Upon information and belief, Internet users (including users located in New York) can also book reservations at the hotels managed by Avra Hospitality through various third-party travel websites, including www.booking.com, which is operating by Booking Holdings Inc., a corporation licensed to do business in the State of New York.

52. A compilation of true and correct copies of certain of Defendant’s online uses is annexed hereto as **Exhibit C**.

**FIRST CLAIM**  
**FEDERAL TRADEMARK INFRINGEMENT**  
**15 U.S.C. § 1114**

53. Plaintiff hereby repeats and realleges the foregoing Paragraphs of the Complaint as if fully set forth herein.

54. Plaintiff owns all right, title and interest in and to the AVRA® Mark, Registration No. 2,493,466.

55. Defendants have used in commerce, without Plaintiff’s permission, the AVRA HOSPITALITY trademark and the use of the stand-alone term AVRA in a manner that is likely to cause confusion or mistake or deceive purchasers as to the source of Defendants’ services and/or cause consumers to mistakenly believe that there is an affiliation, connection, approval, sponsorship or association of Plaintiff and/or Plaintiff’s goods, services and commercial activities,

on the one hand, with Avra Hospitality and/or its respective goods, services or commercial activities, on the other hand.

56. Defendants' acts constitute infringement of Plaintiff's registered AVRA® Mark under 15 U.S.C. § 1114(1).

57. As a direct and proximate result of Defendants' wrongful acts, Plaintiff has suffered and continues to suffer damage to its trademark rights, business reputation and goodwill.

58. Unless restrained, Defendants will continue to use one or more marks confusingly similar to the AVRA® Mark and will cause irreparable damage to Plaintiff. Plaintiff has no adequate remedy at law and is entitled to an injunction restraining Defendants, their respective officers, agents, and employees, and all persons acting in concert with Defendants, from engaging in further acts of infringement.

59. Plaintiff is further entitled to recover from Defendants the actual damages that it has sustained and/or is likely to sustain as a result of Defendants' wrongful acts.

60. Plaintiff is further entitled to recover from Defendants the gains, profits and advantages that Defendants have obtained as a result of their willful, wrongful acts.

61. Because of the willful nature of Defendants' wrongful acts, Plaintiff is entitled to an award of exemplary damages under the common law, and treble damages, increased profits and its reasonable attorneys' fees under 15 U.S.C. § 1117.

**SECOND CLAIM**  
**FEDERAL UNFAIR COMPETITION**  
**15 U.S.C. § 1125(a)**

62. Plaintiff hereby repeats and realleges the foregoing Paragraphs of the Complaint as if fully set forth herein.

63. Defendants' unauthorized adoption and use of a name, trademark, and logo style which are identical or nearly identical to Plaintiff's AVRA® Mark for use in connection with services that are similar, related and complementary to those Plaintiff provides to businesses and individual consumers, as hereinabove alleged, constitutes a use in interstate commerce and a false designation of origin or false and misleading description or representation of goods and services in commerce, with knowledge of the falsity, which is likely to cause confusion, mistake and deception, and in commercial advertising and promotion, misrepresents the nature, characteristics, qualities and origin of Defendants' commercial activities, within the meaning and in violation of 15 U.S.C. § 1125(a).

64. Defendants' unlawful acts in appropriating rights in the AVRA® Mark are and were intended to co-opt Plaintiff's goodwill for Defendants' own pecuniary gain.

65. Defendants' use of the infringing mark has caused or is likely to cause confusion and, unless enjoined, is likely to lead consumers to the mistaken belief that the business of Defendant Avra Hospitality originates from or is in some way associated with, affiliated with, connected to, related to, or sponsored or approved by Plaintiff.

66. Plaintiff does not now and has never sponsored or approved or authorized Defendants' use of the AVRA® Mark or other intellectual property of Plaintiff.

67. The aforesaid and continuing acts of Defendants infringes Plaintiff's AVRA® Mark and constitutes unfair competition in violation of 15 U.S.C. § 1125(a).

68. Plaintiff has been damaged by said infringement and unfair competition and has no adequate remedy at law for Defendants' continuing infringement. Plaintiff is entitled to an injunction restraining Defendants, their respective officers, agents, and employees, and all persons acting in concert with Defendants, from engaging in further acts of infringement and unfair

competition. Unless enjoined, Defendants' continuing infringement will cause irreparable harm to Plaintiff.

69. Plaintiff is further entitled to recover from Defendants the actual damages that it sustained and/or is likely to sustain as a result of Defendants' wrongful acts.

70. Plaintiff is further entitled to recover from Defendants the gains, profits and advantages that Defendants have obtained as a result of their willful wrongful acts.

71. Because of the willful nature of Defendants' wrongful acts, Plaintiff is entitled to an award of exemplary damages under the common law, and treble damages, increased profits and its reasonable attorneys' fees under 15 U.S.C. § 1117.

**THIRD CLAIM**  
**NEW YORK COMMON LAW UNFAIR COMPETITION**

72. Plaintiff hereby repeats and realleges the foregoing Paragraphs of the Complaint as if fully set forth herein.

73. Plaintiff owns all right, title and interest in and to the AVRA® Mark.

74. Business and individual consumers identify the AVRA® Mark exclusively with Plaintiff.

75. Plaintiff has expended substantial time, resources and effort to develop and obtain a strong reputation in the marketplace and enormous goodwill in the AVRA® Mark.

76. Defendants have infringed the AVRA® Mark through its use of the confusingly similar AVRA HOSPITALITY mark. Defendants' unlawful acts are intended to capitalize on Plaintiff's goodwill for Defendants' own pecuniary gain.

77. Defendants' use of the AVRA HOSPITALITY mark is calculated to and is likely to create confusion, deceive and mislead consumers into believing that Defendants' services originate with or are authorized by Plaintiff, or that Plaintiff is responsible for Avra Hospitality's



services, and is likely to cause confusion as to the source of Defendants' services, all to the detriment of Plaintiff.

78. Defendants' acts as alleged herein constitute unfair competition under the common law of New York and will, unless enjoined by the Court, continue to result in harm to the goodwill associated with Plaintiff.

79. Upon information and belief, Defendants committed the acts alleged herein willfully and with the intent to confuse the public and to injure Plaintiff.

80. The acts of Defendants have caused and are causing great and irreparable harm and damage to Plaintiff. Plaintiff has no adequate remedy at law and, and unless Defendants are permanently restrained and enjoined by this Court, such irreparable harm will continue.

81. As a direct and proximate result of Defendants' actions as stated herein, Plaintiff has suffered damage to its reputation and damage to the goodwill of its AVRA® Mark. Further, Plaintiff is entitled to exemplary damages as a result of Defendants' malicious actions as described above.

**FOURTH CLAIM**  
**VIOLATION OF N.Y. GENERAL BUSINESS LAW SEC. 360-1**

82. Plaintiff hereby repeats and realleges the foregoing Paragraphs of the Complaint as if fully set forth herein.

83. Plaintiff's trademark AVRA is arbitrary and inherently distinctive for restaurant and bar services. Plaintiff's AVRA trademark has been used successfully by Plaintiff for decades prior to Defendants' unauthorized adoption and use of the infringing mark AVRA HOSPITALITY and the stand alone term AVRA, and Plaintiff's Mark has gained tremendous renown and has acquired secondary meaning to uniquely identify Plaintiff's AVRA restaurants.

84. Defendants' aforesaid recent adoption and use of the nearly identical and infringing mark AVRA HOSPITALITY and the term AVRA and Defendants' wrongful conduct as hereinabove alleged are likely to cause and, upon information and belief, have caused injury to Plaintiff's business reputation and dilution or likely dilution of the distinctiveness of Plaintiff's renowned AVRA trademark, and are likely to or have disparaged, damaged and blurred and lessened the distinctiveness of Plaintiff's AVRA trademark by blurring said Mark.

85. Defendants' use of the mark AVRA HOSPITALITY and the term AVRA for services relating to hotels, restaurants and bars in the hospitality industry and for employment therein, is in a manner inconsistent with and diluting or likely to dilute the distinctive quality of Plaintiff's AVRA® trademark. As a result, Plaintiff's business reputation and good will and the favorable and distinctive association which Plaintiff's AVRA trademark has with the public have been and are likely to be impaired, damaged and diminished by blurring.

86. Upon information and belief, Defendants' infringing and diluting acts as hereinabove alleged have been done with predatory intent. Plaintiff has been damaged by said infringement and dilution and has no adequate remedy at law for Defendants' continuing infringement and dilution. Unless enjoined, Defendants' continuing infringement and dilution will cause irreparable harm to Plaintiff.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests judgment against Defendant as follows:

1. Preliminary and permanent injunctions enjoining Defendants, and their subsidiaries, partners, members, officers, agents, servants, employees, attorneys, and those in active concert or participation with them or any of them who receive actual notice of the order and judgment of this Court:

- a. from any further use of any name, or trademark, which includes in whole or in part the word “AVRA”;
- b. from using any other mark, word, name or symbol similar to Plaintiff’s AVRA® trademark which is likely to cause confusion, mistake or to deceive;
- c. from infringing Plaintiff’s rights in its aforesaid trademark, or using any colorable imitation thereof; and
- d. from continuing the acts of unfair competition and dilution herein complained of;

2. Pursuant to 15 U.S.C. § 1116(a), ordering Defendants to file with the Court and serve upon Plaintiff’s counsel, within thirty (30) days after service of the order of injunction, a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the injunction;

3. Ordering Defendants to expressly abandon any and all state and federal trademark applications seeking registration of a mark that includes in whole or in part the term AVRA, including, specifically, U.S. Trademark Application Nos. 87/717,456 and 87/849,410, or, if any such applications have been registered, ordering Defendants to expressly cancel any such registration and ordering the cancellation of any such registration pursuant to 15 U.S.C. § 1119;

4. Awarding Plaintiff all of Defendants’ profits, and Plaintiff’s damages by reason of the acts of trademark infringement, unfair competition and willful dilution complained of, said damages to be trebled pursuant to 15 U.S.C. § 1117;

5. Awarding Plaintiff punitive damages for Defendants' willful or reckless and continuing unfair competition and infringement of Plaintiff's rights continuing after actual or constructive notice of same;

6. Awarding Plaintiff its costs, expenses and reasonable attorneys' fees to the extent allowed by law; and

7. Awarding Plaintiff such other or further relief as the Court may deem just and proper.

Dated: New York, New York  
August 16, 2019

Respectfully submitted,

**PRYOR CASHMAN LLP**

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# **EXHIBIT A**

**Int. Cl.: 42**

**Prior U.S. Cls.: 100 and 101**

**Reg. No. 2,493,466**

**United States Patent and Trademark Office**

**Registered Sep. 25, 2001**

**SERVICE MARK  
PRINCIPAL REGISTER**

**AVRA**

MOTORCYCLE EQUITIES (NEW YORK COR-  
PORATION)  
1370 AVENUE OF THE AMERICAS  
SUITE 203  
NEW YORK, NY 10019

FIRST USE 2-14-1999; IN COMMERCE 2-14-1999.


SN 75-869,249, FILED 12-13-1999.

FOR: RESTAURANT SERVICES, IN CLASS 42  
(U.S. CLS. 100 AND 101).

ROBERT C. CLARK JR., EXAMINING ATTORNEY

**BULK DATA:** Since May 7 at 12 a.m., the TSDR Application Programming Interface (API) has not included all information. Images of trademark registration certificates issued since July 2016 and some office actions are absent in the API. Customers who need to retrieve a copy of a registration certificate or an office action should download it directly from the TSDR documents tab.

**INTERMITTENT SYSTEM ISSUES:** Due to high-volume usage, you may experience intermittent issues on the Trademark Status and Document Retrieval (TSDR) system between 6 – 8 a.m. ET. Refreshing your web browser should resolve the issue. If you still need assistance accessing a document, email [teas@uspto.gov](mailto:teas@uspto.gov) and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

STATUS	DOCUMENTS	MAINTENANCE	<a href="#">Back to Search</a>	Print
<b>Generated on:</b> This page was generated by TSDR on 2019-08-16 13:30:10 EDT				
<b>Mark:</b> AVRA				
<b>AVRA</b>				
<b>US Serial Number:</b> 75869249		<b>Application Filing Date:</b> Dec. 13, 1999		
<b>US Registration Number:</b> 2493466		<b>Registration Date:</b> Sep. 25, 2001		
<b>Register:</b> Principal				
<b>Mark Type:</b> Service Mark				
<b>TM5 Common Status Descriptor:</b>		LIVE/REGISTRATION/Issued and Active		
		The trademark application has been registered with the Office		
<b>Status:</b> The registration has been renewed.				
<b>Status Date:</b> Jul. 01, 2011				
<b>Publication Date:</b> Aug. 22, 2000		<b>Notice of Allowance Date:</b> Nov. 14, 2000		
<b>▼ Mark Information</b> <span style="float: right;"><a href="#">Collapse All</a></span>				
<b>Mark Literal Elements:</b> AVRA				
<b>Standard Character Claim:</b> No				
<b>Mark Drawing Type:</b> 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)				
<b>▼ Goods and Services</b>				
<b>Note:</b>				
The following symbols indicate that the registrant/owner has amended the goods/services:				
<ul style="list-style-type: none"> <li>• Brackets [...] indicate deleted goods/services;</li> <li>• Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and</li> <li>• Asterisks *...* identify additional (new) wording in the goods/services.</li> </ul>				
<b>For:</b> restaurant services				
<b>International Class(es):</b> 042 - Primary Class		<b>U.S Class(es):</b> 100, 101		
<b>Class Status:</b> ACTIVE				

<b>Basis:</b>	1(a)		
<b>First Use:</b>	Feb. 14, 1999	<b>Use in Commerce:</b>	Feb. 14, 1999
<b>▼ Basis Information (Case Level)</b>			
<b>Filed Use:</b>	No	<b>Currently Use:</b>	Yes
<b>Filed ITU:</b>	Yes	<b>Currently ITU:</b>	No
<b>Filed 44D:</b>	No	<b>Currently 44E:</b>	No
<b>Filed 44E:</b>	No	<b>Currently 66A:</b>	No
<b>Filed 66A:</b>	No	<b>Currently No Basis:</b>	No
<b>Filed No Basis:</b>	No		
<b>▼ Current Owner(s) Information</b>			
<b>Owner Name:</b>	48th Restaurant Associates LLC		
<b>Owner Address:</b>	Suite 1925 1350 Avenue of the Americas New York, NEW YORK UNITED STATES 10019		
<b>Legal Entity Type:</b>	CORPORATION	<b>State or Country Where Organized:</b>	NEW YORK
<b>▼ Attorney/Correspondence Information</b>			
<b>Attorney of Record</b>			
<b>Attorney Name:</b>	William Thomashower		
<b>Attorney Primary Email Address:</b>	<a href="mailto:wthomashower@pryorcashman.com">wthomashower@pryorcashman.com</a>	<b>Attorney Email Authorized:</b>	Yes
<b>Correspondent</b>			
<b>Correspondent Name/Address:</b>	William Thomashower Pryor Cashman LLP 7 Times Square New York, NEW YORK UNITED STATES 10036		
<b>Phone:</b>	212-326-0811	<b>Fax:</b>	212-710-6097
<b>Correspondent e-mail:</b>	<a href="mailto:wthomashower@pryorcashman.com">wthomashower@pryorcashman.com</a> <a href="mailto:kholder@pryorcashman.com">kholder@pryorcashman.com</a> <a href="mailto:tmdocketing@pryorcashman.com">tmdocketing@pryorcashman.com</a>	<b>Correspondent e-mail Authorized:</b>	Yes
<b>Domestic Representative - Not Found</b>			
<b>▼ Prosecution History</b>			
<b>Date</b>	<b>Description</b>	<b>Proceeding Number</b>	
Oct. 11, 2018	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888	
Oct. 11, 2018	TEAS CHANGE OF OWNER ADDRESS RECEIVED		



Oct. 11, 2018	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Oct. 11, 2018	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Jul. 01, 2011	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	71378
Jul. 01, 2011	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Apr. 13, 2011	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	71378
Apr. 13, 2011	PAPER RECEIVED	
May 28, 2009	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Sep. 29, 2007	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	71378
Sep. 27, 2007	ASSIGNED TO PARALEGAL	71378
Sep. 25, 2007	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Sep. 25, 2007	TEAS SECTION 8 & 15 RECEIVED	
Sep. 24, 2007	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Sep. 24, 2007	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Jan. 23, 2007	CASE FILE IN TICRS	
Sep. 25, 2001	REGISTERED-PRINCIPAL REGISTER	
May 03, 2001	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Apr. 23, 2001	STATEMENT OF USE PROCESSING COMPLETE	
Mar. 09, 2001	USE AMENDMENT FILED	
Nov. 14, 2000	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Aug. 22, 2000	PUBLISHED FOR OPPOSITION	
Jul. 21, 2000	NOTICE OF PUBLICATION	
Jun. 29, 2000	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 16, 2000	EXAMINER'S AMENDMENT MAILED	
Jun. 09, 2000	NON-FINAL ACTION MAILED	
May 25, 2000	ASSIGNED TO EXAMINER	59500

### ▼ TM Staff and Location Information

#### TM Staff Information - None

#### File Location

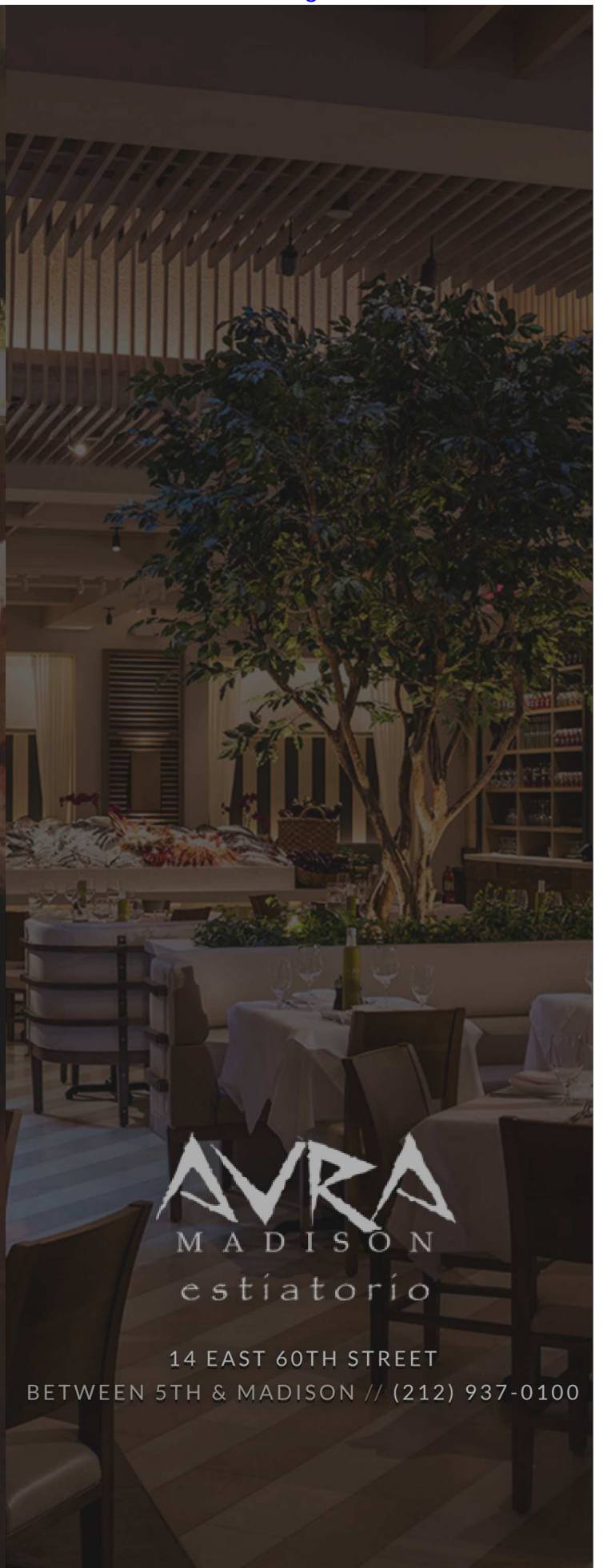
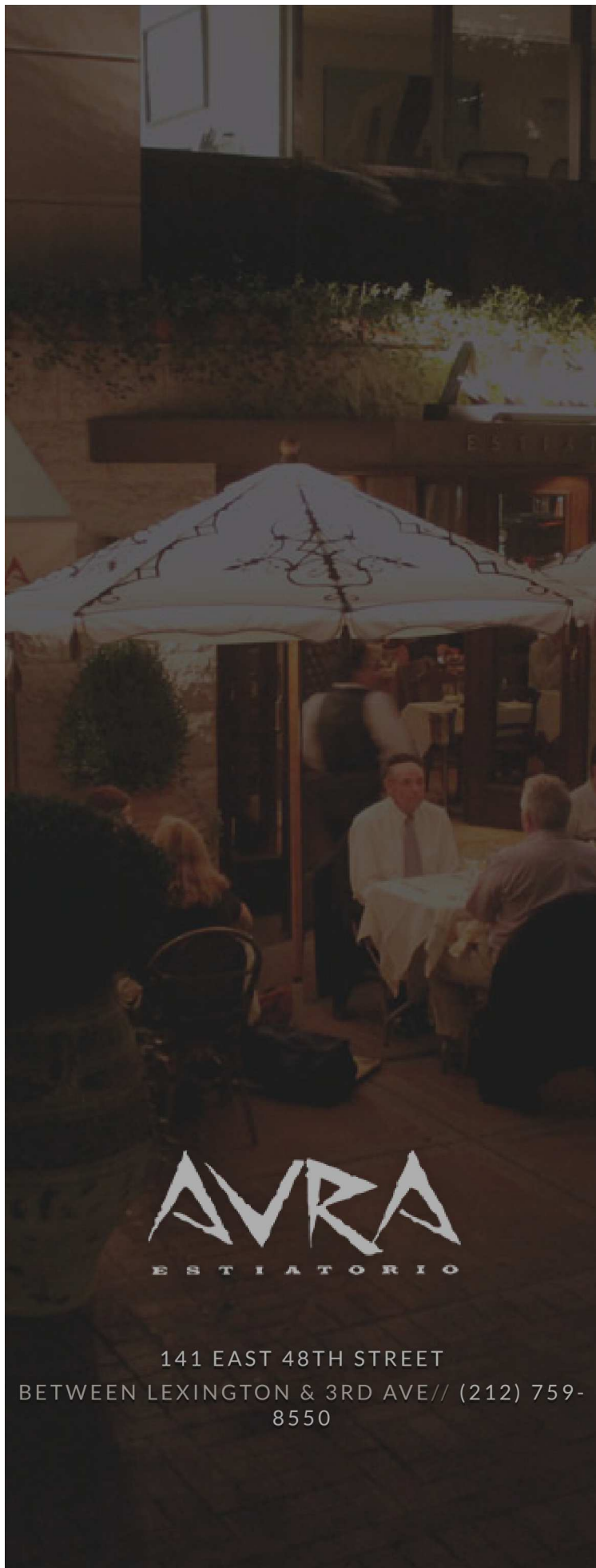
Current Location: GENERIC WEB UPDATE

Date in Location: Jul. 01, 2011

### ▼ Assignment Abstract Of Title Information - Click to Load

### ▼ Proceedings - Click to Load

# **EXHIBIT B**







LOCATIONS

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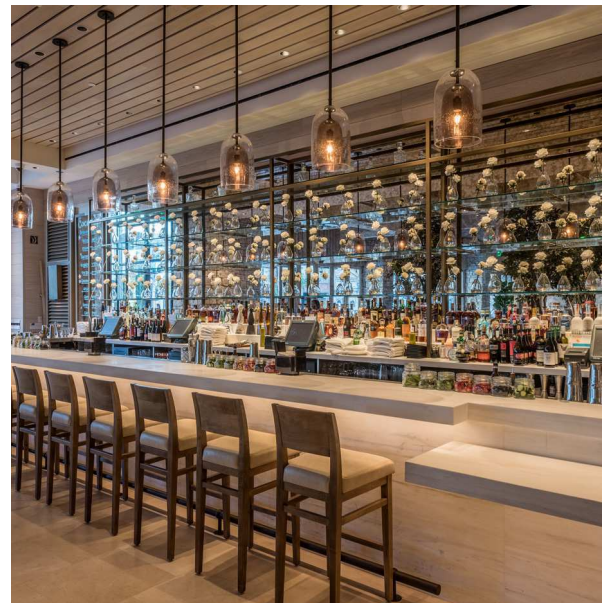
EMPLOYMENT

// (310) 734-0841


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## WELCOME

New York City's famed, authentic Greek restaurant Avra Madison Estiatorio has opened its first west coast outpost, appropriately named **AVRA Beverly Hills**. Located in the "Golden Triangle" of Beverly Hills, AVRA Beverly Hills is designed by award-winning architecture and design firm Rockwell Group. The firm has created an atmosphere similar to that of an open-air villa in Greece, with fresh lemon trees, imported limestone, and stone washed walls. The new 11,000-square-foot eatery, with private spaces for all types of events, features traditional



Greek cuisine with an emphasis on fresh seafood.

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# **EXHIBIT C**



[Career Opportunities](#)

# Setting the Standard in Hospitality Management

A Modern Approach to Hospitality & Hotel Management

## Leaders In Our Business.

The hospitality industry is fast-paced and ever-changing, and growth in today's market demands a partner who understands the business from the inside out. That's where we come in. With Avra, industry expertise comes standard — we understand the complex challenges that come with hotel management, and we have the experience to navigate these challenges seamlessly. Together, we can take your property to the next level.

## What We Do

Partnering with Avra means leaving behind the burdens that come with hotel ownership. Everyday tasks like general hotel operation, staffing, bookkeeping and sales become our responsibility, and we ensure every aspect of our hotel property management is optimized to drive more profit at your property. Here are just a few of the services we provide to give your property the competitive edge it needs:

- Human resources
- Revenue enhancement
- Bookkeeping
- Marketing

- Day-to-day management

## Our Portfolio

Avra manages a diverse portfolio of properties from premium-name brands to well-loved luxury boutique hotels. Get a closer look at each of our locations here.



HILTON ROCHESTER MAYO CLINIC AREA



DOUBLETREE BY HILTON ROCHESTER



HILTON GARDEN INN ROCHESTER



INN AT HARBOR HILL

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# Avra Job Opportunities



Company Location ▾

Job Category ▾

Schedule ▾

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Showing 21 of 21 opportunities

By Newest ▾

## PT Night Audit at DoubleTree

Aug 5, 2019

Front Desk

PTNIG01287

Part Time

Doubletree by Hilton  
150 S Broadway  
Rochester, MN 55904, USA

Accommodate hotel, patrons by registering and assigning rooms to guests, issuing room keys, transmitting and receiving messages, keeping records of occupied rooms and guests' accounts, making and confirming reservations, and presenting statements to and collecting payments from departing guests.

## Public Space at Hilton Garden Inn

Aug 5, 2019

Housekeeping

PUBLI01286

Full Time

Hilton Garden Inn  
225 Broadway Ave S  
Rochester, MN 55904, USA

Keep public space areas of hotel in clean and orderly condition. Perform heavy cleaning duties, such as cleaning floors, washing walls and glass, and removing rubbish. Light maintenance duties as requested by guests.

## Turndown/Housekeeping Attendant at Hilton

Jul 31, 2019

Housekeeping

TURND01284

Full Time

Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

A Turndown Attendant is responsible for cleaning and stocking guest rooms and providing turndown service in the hotels continuing effort to deliver outstanding guest service and financial profitability.

## Public Space PM at Hilton

Jul 31, 2019

Housekeeping

PUBLI01285

Full Time

Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

Overview Keep public space areas of hotel in clean and orderly condition. Perform heavy cleaning duties, such as cleaning floors, washing walls and glass, and removing rubbish. Light maintenance duties as requested by guests.

---

## Lobby Bartender at Hilton Garden Inn

Jul 30, 2019

 Kitchen  LOBBY01283  Full Time

Hilton Garden Inn  
225 Broadway Ave S  
Rochester, MN 55904, USA

Oversees bar activities to ensure excellent customer service, accurate cash drawer balancing and staff training

---

## Housekeeper at DoubleTree

Jul 30, 2019

 Housekeeping  HOUSE01279  Full Time

Doubletree by Hilton  
150 S Broadway  
Rochester, MN 55904, USA

To clean guest rooms and suites to ensure highest standards of cleanliness and service. Providing our guest with clean, home-away-from-home experience while staying with us.

---

## Bell Attendant at Hilton Garden Inn

Jul 30, 2019

 Front Desk  BELLA01281  Full Time

Hilton Garden Inn  
225 Broadway Ave S  
Rochester, MN 55904, USA

Handle baggage for guests at hotel. Provide exemplary customer service with every customer including valet service, local directions and local area information.

---

## Guest Service Agent at Hilton

Jul 29, 2019

 Front Desk  GUEST01277  Full Time

Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

Accommodate hotel, patrons by registering and assigning rooms to guests, issuing room keys, transmitting and receiving messages, keeping records of occupied rooms and guests' accounts, making and confirming reservations, and presenting statements to and collecting payments from departing guests.

---



## Night Audit at Hilton

Jul 29, 2019

 Front Desk NIGHT01278 Full Time


Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

Accommodate hotel, patrons by registering and assigning rooms to guests, issuing room keys, transmitting and receiving messages, keeping records of occupied rooms and guests' accounts, making and confirming reservations, and presenting statements to and collecting payments from departing guests. Is the Manager On Duty during the shift and is responsible for the entire hotel and it's operation.

---

## Housekeeping Inspector/Dispatch at Hilton

Jul 26, 2019

 Housekeeping HSKPI01276 Full Time


Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

Inspect guest rooms and public areas for compliance with established cleanliness and maintenance standards. Answer and direct all incoming phone calls in a courteous, respond to guest and employee's inquiries and dispatch appropriate service in a timely, friendly and efficient manner to ensure ultimate guest satisfaction

---

## Bell Attendant at Hilton

Jul 16, 2019

 Front Desk BELLA01275 Full Time

Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

Handle baggage for guests at hotel. Provide exemplary customer service with every customer including valet service, local directions and local area information.

---

## Banquet Server at DoubleTree

Jul 15, 2019

 Banquets BANQU01273 Part Time

Doubletree by Hilton  
150 S Broadway  
Rochester, MN 55904, USA

To provide exceptional service to all of our guest.

---

## Guest Service Agent at DoubleTree

Jul 10, 2019

 Front Desk GUEST01265 Full Time

Doubletree by Hilton  
150 S Broadway  
Rochester, MN 55904, USA

Accommodate hotel patrons by registering and assigning rooms to guests, issuing room keys, transmitting and receiving messages, keeping records of occupied rooms and guests' accounts, making and confirming reservations, and presenting statements to and collecting payments from departing guests.

---

## Housekeeper at Hilton Garden Inn

Jun 26, 2019

 Housekeeping  HOUSE01266  Full Time

Hilton Garden Inn  
225 Broadway Ave S  
Rochester, MN 55904, USA

To clean guest rooms and suites to ensure highest standards of cleanliness and service. Providing our guest with clean, home-away-from-home experience while staying with us.

---

## Housekeeper at Hilton

Jun 24, 2019

 Housekeeping  HOUSE01264  Full Time

Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

To clean guest rooms and suites to ensure highest standards of cleanliness and service. Providing our guest with clean, home-away-from-home experience while staying with us.

---

## Housekeeping Internship

Jun 3, 2019

 Housekeeping  HOUSE01262  Full Time

Hilton Garden Inn  
225 Broadway Ave S  
Rochester, MN 55904, USA

To clean guest rooms and suites to ensure highest standards of cleanliness and service. Providing our guest with clean, home-away-from-home experience while staying with us.

---

## Guest Service Agent at Hilton Garden Inn

May 31, 2019

 Front Desk  GUEST01261  Part Time

Hilton Garden Inn  
225 Broadway Ave S  
Rochester, MN 55904, USA

Accommodate hotel patrons by registering and assigning rooms to guests, issuing room keys, transmitting and receiving messages, keeping records of occupied rooms and guests' accounts, making and confirming reservations, and presenting statements to and collecting payments from departing guests.

---

## Concierge Supervisor at Hilton

May 23, 2019

 Kitchen  CONCI01255  Full Time

Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

Provide leadership for Concierge staff, and maintain hotel standards and policies. Exemplify expected demeanor, customer service and professionalism for all employees to mirror

---

## Concierge at Hilton

May 23, 2019

 Kitchen  CONCI01250  Full Time

Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

To ensure the best possible service to all guests utilizing the Executive lounge amenities.

---

## Concierge at DoubleTree

May 22, 2019

 Kitchen  CONCI01251  Full Time

Doubletree by Hilton  
150 S Broadway  
Rochester, MN 55904, USA

To ensure the best possible service to all guests utilizing the Executive lounge amenities.

---

## Night Audit at Hilton Garden Inn

May 14, 2019

 Front Desk  NIGHT01248  Part Time

Hilton Garden Inn  
225 Broadway Ave S  
Rochester, MN 55904, USA

Accommodate hotel, patrons by registering and assigning rooms to guests, issuing room keys, transmitting and receiving messages, keeping records of occupied rooms and guests' accounts, making and confirming reservations, and presenting statements to and collecting payments from departing guests. Is the Manager On Duty during the shift and is responsible for the entire hotel and it's operation.

---

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Hilton DoubleTree Hilton Garden Inn

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**Avra Hospitality**

Yesterday at 10:07 AM · 🌐

Yesterday, Hilton Garden Inn celebrated their OUTSTANDING audit score with a BBQ and Flapdoodles Truck stopping by!

Our teams are always exceeding our brand standard expectations. This is a well deserved treat! Congrats Hilton Garden Inn Rochester, MN!

Beachfront Bed & Breakfast Niantic

https://secure.thinkreservations.com/innharborhill/reservations?\_ga=2.42572834.645779318.1556718856-1039568700.1552938160

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# EXHIBIT P

**From:** [John Brinson](#)  
**To:** [John Brinson](#)  
**Subject:** FW: 48th Restaurant v. Avra hospitality LLC, et al. - 19-cv-07708  
**Date:** Tuesday, September 17, 2019 10:35:43 AM

---

---

**From:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>  
**Sent:** Thursday, August 22, 2019 7:11 PM  
**To:** Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)>  
**Cc:** Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>; John Brinson <[john@vividip.com](mailto:john@vividip.com)>; Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>  
**Subject:** RE: 48th Restaurant v. Avra hospitality LLC, et al. - 19-cv-07708

Marcy:

Thank you for your email and we await your further advice.

Regarding service, we could not be certain in advance that you would accept service for a new action and did not want to have any issue about that.

As you know, we will generally work with you on resolving scheduling issues for both sides as a professional courtesy, as long as there is no substantive prejudice.

Regards.

Bill

---

**WILLIAM THOMASHOWER**

Counsel

**PRYOR CASHMAN LLP**

7 Times Square, New York, NY 10036-6569

[wthomashower@pryorcashman.com](mailto:wthomashower@pryorcashman.com)

Direct Tel: 212-326-0811

Direct Fax: 212-710-6097

[www.pryorcashman.com](http://www.pryorcashman.com)

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---

**From:** Marcy Sperry [<mailto:marcy@vividip.com>]  
**Sent:** Thursday, August 22, 2019 7:06 PM  
**To:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>  
**Cc:** Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>; John Brinson <[john@vividip.com](mailto:john@vividip.com)>; Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>  
**Subject:** Re: 48th Restaurant v. Avra hospitality LLC, et al. - 19-cv-07708

Bill,

# EXHIBIT Q

**From:** [Marcy Sperry](#)  
**To:** ["Thomashower, William"](#)  
**Cc:** [Alex Aron](#); [John Brinson](#); [Klarberg, Ryan S.](#); ["c44b05b91+matter1158325579@maildrop.clio.com"](#)  
**Subject:** RE: 48th Restaurant v. Avra hospitality LLC, et al. - 19-cv-07708  
**Date:** Monday, August 26, 2019 5:20:00 PM  
**Attachments:** [image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)

---

Bill,

We will consent to a stay of the Opposition on the condition that your client complies with its discovery deadlines, which Ryan expressly stated would be met in an August 13<sup>th</sup> email, just three days before you filed the lawsuit.

In particular, your client's response to interrogatories were due on July 17, 2019. We then granted a two week extension, making your client's interrogatory responses due on July 31, 2019. Then, when you informed us only two days before the deadline that our interrogatories allegedly exceeded the limit, we immediately sent you a revised set that were fully contained within the original set. As such, your responses were still due on July 31. You also committed to producing documents by August 23<sup>rd</sup> and serving the interrogatory responses no later than August 30<sup>th</sup>. Accordingly, your client is required to produce documents and serve interrogatory responses.

Will you agree to produce the requisite documents and interrogatory responses by August 30 as your client is required to do under the discovery rules? If so, we will consent to the stay.

Best regards,

Marcy

**Marcy L. Sperry**  
Founding Partner

**VIVID IP**  
DARE TO DREAM™

**P** 404.474.1600 | **D** 470.851.0871  
3 Alliance Center | 3550 Lenox Road NE, Floor 21 | Atlanta, GA 30326

[marcy@vividip.com](mailto:marcy@vividip.com)



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---

**From:** Thomashower, William <WThomashower@PRYORCASHMAN.com>  
**Sent:** Thursday, August 22, 2019 7:11 PM  
**To:** Marcy Sperry <marcy@vividip.com>  
**Cc:** Alex Aron <Alex@vividip.com>; John Brinson <john@vividip.com>; Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>  
**Subject:** RE: 48th Restaurant v. Avra hospitality LLC, et al. - 19-cv-07708

Marcy:

Thank you for your email and we await your further advice.

Regarding service, we could not be certain in advance that you would accept service for a new action and did not want to have any issue about that.

As you know, we will generally work with you on resolving scheduling issues for both sides as a professional courtesy, as long as there is no substantive prejudice.

Regards.

Bill

---

**WILLIAM THOMASHOWER**

Counsel

**PRYOR CASHMAN LLP**

7 Times Square, New York, NY 10036-6569

[wthomashower@pryorcashman.com](mailto:wthomashower@pryorcashman.com)

Direct Tel: 212-326-0811

Direct Fax: 212-710-6097

[www.pryorcashman.com](http://www.pryorcashman.com)

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---

**From:** Marcy Sperry [<mailto:marcy@vividip.com>]  
**Sent:** Thursday, August 22, 2019 7:06 PM  
**To:** Thomashower, William <[WThomashower@PRYORCASHMAN.com](mailto:WThomashower@PRYORCASHMAN.com)>  
**Cc:** Alex Aron <[Alex@vividip.com](mailto:Alex@vividip.com)>; John Brinson <[john@vividip.com](mailto:john@vividip.com)>; Klarberg, Ryan S. <[RKlarberg@PRYORCASHMAN.com](mailto:RKlarberg@PRYORCASHMAN.com)>  
**Subject:** Re: 48th Restaurant v. Avra hospitality LLC, et al. - 19-cv-07708

# **EXHIBIT R**



**From:** [Thomashower, William](#)  
**To:** [Marcy Sperry](#)  
**Cc:** [Alex Aron](#); [John Brinson](#); [Klarberg, Ryan S.](#)  
**Subject:** Re: 48th Restaurant v. Avra hospitality LLC, et al. - 19-cv-07708  
**Date:** Wednesday, August 28, 2019 10:31:15 AM  
**Attachments:** [image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)

---

Dear Marcy,

The reason to stay the opposition when a trademark infringement civil action is filed is because the action is broader than the opposition proceeding. Therefore it makes no sense to condition a stay on discovery in the proceeding which is about to be stayed and likely mooted.

The infringement action addresses not just one of your client's applications but both applications as well as real world infringement from confusion and likelihood of confusion due to your client's decision to commence actual use, which is beyond the issue of registration in the USPTO.

So we will proceed accordingly.

Bill Thomashower

Sent from my iPhone

On Aug 26, 2019, at 5:20 PM, Marcy Sperry <[marcy@vividip.com](mailto:marcy@vividip.com)<<mailto:marcy@vividip.com>>> wrote:

Bill,

We will consent to a stay of the Opposition on the condition that your client complies with its discovery deadlines, which Ryan expressly stated would be met in an August 13th email, just three days before you filed the lawsuit.

In particular, your client's response to interrogatories were due on July 17, 2019. We then granted a two week extension, making your client's interrogatory responses due on July 31, 2019. Then, when you informed us only two days before the deadline that our interrogatories allegedly exceeded the limit, we immediately sent you a revised set that were fully contained within the original set. As such, your responses were still due on July 31. You also committed to producing documents by August 23rd and serving the interrogatory responses no later than August 30th. Accordingly, your client is required to produce documents and serve interrogatory responses.

Will you agree to produce the requisite documents and interrogatory responses by August 30 as your client is required to do under the discovery rules? If so, we will consent to the stay.

Best regards,

Marcy

Marcy L. Sperry

Founding Partner

<image003.png>

P 404.474.1600

|

D 470.851.0871

3 Alliance Center

|

3550 Lenox Road NE, Floor 21 | Atlanta, GA 30326

marcy@vividip.com<<mailto:marcy@vividip.com>>

<image004.png><<http://vividip.legal/>>

<image005.png><<https://www.linkedin.com/company/vividip>>

<image006.png><<https://www.facebook.com/vividiplaw/>>

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From: Thomashower, William

<WThomashower@PRYORCASHMAN.com><<mailto:WThomashower@PRYORCASHMAN.com>>>

Sent: Thursday, August 22, 2019 7:11 PM

To: Marcy Sperry <marcy@vividip.com><<mailto:marcy@vividip.com>>>

Cc: Alex Aron <Alex@vividip.com><<mailto:Alex@vividip.com>>>; John Brinson

<john@vividip.com><<mailto:john@vividip.com>>>; Klarberg, Ryan S.

<RKlarberg@PRYORCASHMAN.com><<mailto:RKlarberg@PRYORCASHMAN.com>>>

Subject: RE: 48th Restaurant v. Avra hospitality LLC, et al. - 19-cv-07708

Marcy:

Thank you for your email and we await your further advice.

Regarding service, we could not be certain in advance that you would accept service for a new action and did not

want to have any issue about that.

As you know, we will generally work with you on resolving scheduling issues for both sides as a professional courtesy, as long as there is no substantive prejudice.

Regards.

Bill

---

William Thomashower  
Counsel  
Pryor Cashman LLP  
7 Times Square, New York, NY 10036-6569  
wthomashower@pryorcashman.com<<mailto:wthomashower@pryorcashman.com>>

Direct Tel: 212-326-0811

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From: Marcy Sperry [<mailto:marcy@vividip.com>]  
Sent: Thursday, August 22, 2019 7:06 PM  
To: Thomashower, William  
<WThomashower@PRYORCASHMAN.com<<mailto:WThomashower@PRYORCASHMAN.com>>>  
Cc: Alex Aron <Alex@vividip.com<<mailto:Alex@vividip.com>>>; John Brinson  
<john@vividip.com<<mailto:john@vividip.com>>>; Klarberg, Ryan S.  
<RKlarberg@PRYORCASHMAN.com<<mailto:RKlarberg@PRYORCASHMAN.com>>>  
Subject: Re: 48th Restaurant v. Avra hospitality LLC, et al. - 19-cv-07708

Bill,

I find it rather excessive to formally serve my clients when you know I could have accepted service and submitted a waiver of service. Nevertheless, we will discuss with our client and get back to you on whether our client will consent to the stay.

Marcy  
Marcy L. Sperry

Founding Partner

<image007.jpg>

P 404.474.1600

|

D 470.851.0871

3 Alliance Center

|  
3550 Lenox Road NE, Floor 21 | Atlanta, GA 30326

marcy@vividip.legal<<mailto:marcy@vividip.legal>>

<image008.jpg><<http://vividip.legal/>>

<image008.jpg><<https://www.linkedin.com/company/vividip>>

<image008.jpg><<https://www.facebook.com/vividiplaw/>>

On Aug 22, 2019, at 3:19 PM, Thomashower, William  
<WThomashower@pryorcashman.com<<mailto:WThomashower@pryorcashman.com>>> wrote:  
Resending with copies to Alex and John.

---

William Thomashower  
Counsel  
Pryor Cashman LLP  
7 Times Square, New York, NY 10036-6569  
wthomashower@pryorcashman.com<<mailto:wthomashower@pryorcashman.com>>  
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From: Thomashower, William  
Sent: Thursday, August 22, 2019 3:13 PM  
To: 'Marcy Sperry' <marcy@vividip.com<<mailto:marcy@vividip.com>>>  
Cc: Klarberg, Ryan S. <rklarberg@pryorcashman.com<<mailto:rklarberg@pryorcashman.com>>>  
Subject: FW: 48th Restaurant v. Avra hospitality LLC, et al. - 19-cv-07708  
Importance: High

Dear Marcy:

I attach a courtesy copy of the Complaint we have now filed for our client in federal court against your client Avra Hospitality LLC, for trademark infringement and other claims. I believe your client has just been served.

Your client had two ITU trademark applications for AVRA HOSPITALITY, and as you know, we extended time to oppose one application in October 2018 and then filed a Notice of Opposition March 11, 2019 with full details as to the likelihood of confusion with our client's long previously used and registered mark AVRA® for restaurants. (See Complaint paras. 32-42). Notwithstanding that opposition claim and those details, we discovered that your client proceeded to commence actual use of the challenged trademark AVRA HOSPITALITY in or about June 2019 (sometimes only with the word AVRA) and it has appeared nationwide and here in the tristate area. That

has necessitated this action for infringement and other relief.

As you may be aware, a civil infringement action between the parties addressing likelihood of confusion of the challenged mark is typically grounds to stay the opposition proceeding. See 37 C.F.R. § 2.117(a) and related TBMP Rule 510. Please review and advise if Applicant will consent to a stay on that ground. Ryan and I are available should you wish to discuss the matter by telephone.

Regards.

Bill

---

William Thomashower  
Counsel  
Pryor Cashman LLP  
7 Times Square, New York, NY 10036-6569  
wthomashower@pryorcashman.com<<mailto:wthomashower@pryorcashman.com>>  
<<mailto:wthomashower@pryorcashman.com>>

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<DKT 1 - Complaint.pdf>

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# EXHIBIT S

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application

Serial No. 87/849,410

Mark: AVRA HOSPITALITY

Filing Date: March 11, 2019

-----	X	
48 <sup>TH</sup> RESTAURANT ASSOCIATES LLC,	:	
	:	
Opposer,	:	
	:	
-against-	:	Opposition No. 91-246,895
	:	
AVRA HOSPITALITY LLC,	:	
	:	
Applicant.	:	
-----	X	

**OPPOSER’S MOTION TO SUSPEND OPPOSITION**

Opposer, 48th Restaurant Associates LLC (“Opposer”), by and through its undersigned counsel, hereby moves to suspend the above-captioned proceeding, Opposition No. 91-246,895 (the “Opposition Proceeding”) pursuant to 37 C.F.R. §2.117(a) and TBMP Rule 510.02. Opposer recently discovered that subsequent to the Opposition Proceeding, Applicant, Avra Hospitality LLC (“Avra Hospitality” or “Applicant”) commenced actual use of the word mark “AVRA HOSPITALITY”, a shorter variation “AVRA”, and an AVRA HOSPITALITY design mark (“Accused Marks”) in connection with its business, which is included within the specification of services in the opposed application. This actual use has appeared in Avra Hospitality’s marketing nationwide, and the company has entered into actual contracts for its services under Applicant’s opposed mark, AVRA HOSPITALITY.

Accordingly, on August 16, 2019, Opposer filed a federal action against Applicant and two of its officers, for trademark infringement of Opposer’s registered mark, AVRA®, U.S. Reg. No. 2,493,466, which is the priority registration alleged by Opposer in this Opposition Proceeding.

The civil action was filed in the United States District Court for the Southern District of New York, as Civil Action No. 1:19-cv-07708-VSB (the “Civil Action”) entitled *48th Restaurant Associates LLC v. Avra Hospitality LLC, Andrew Chafoulis, and Miki Radovanovic*. A true and correct copy of the operative pleading (*i.e.*, the Complaint and exhibits) filed in the Civil Action is attached hereto as Exhibit A. The Complaint has been served on defendants (including Applicant), but no Answer or response has yet been served.

The Civil Action alleges confusion and likelihood of confusion arising from Applicant’s actual use in commerce of the Accused Marks and seeks relief of damages, an injunction, and an order directing Applicant to abandon its two pending applications before the USPTO, namely application U.S. Serial No. 87/849,410 for the AVRA HOSPITALITY mark which is the subject of this Opposition Proceeding, and U.S. Serial No. 87/717,456, for the same word mark, AVRA HOSPITALITY, which was also filed as an Intent-to-Use (“ITU”) application. Likelihood of confusion between the same marks of the respective parties was also alleged in the Notice of Opposition in this Opposition Proceeding. Accordingly the Civil Action has a bearing on the Opposition Proceeding which involves the same and similar issues.<sup>1</sup> Under Rule 2.117, the Board may suspend an opposition when “it shall come to the attention of the Trademark Trial and Appeal Board that a party or the parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case. In such situations, “[i]t is the policy of the Board to suspend . . . .” *Adidas America, Inc. v. Michael Calmese*, Case No. 92048779 (TTAB Order, July 2, 2008). Therefore, “judicial economy” is best served by suspension of the Opposition Proceeding.

---

<sup>1</sup> In addition, the Civil Action asserts other claims outside the Board’s jurisdiction, including, but not limited to, Applicant’s actual infringement of Opposer’s AVRA® Mark by Defendant’s actual use of the AVRA HOSPITALITY mark and the mark “AVRA” in commerce, alleged to be in violation of federal and state law, including a claim for dilution under New York state law.



Accordingly, Opposer respectfully requests that the Board grant Opposer's motion to suspend the Opposition Proceeding pending final disposition of the Civil Action.

Dated: September 3, 2019

Respectfully submitted,

**PRYOR CASHMAN LLP**

By: /William Thomashower/  
William Thomashower, Esq., Counsel  
Ryan S. Klarberg, Esq.  
7 Times Square  
New York, New York 10036  
(212) 421-4100  
[wthomashower@pryorcashman.com](mailto:wthomashower@pryorcashman.com)  
[rkларberg@pryorcashman.com](mailto:rkларberg@pryorcashman.com)  
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*Attorneys for Opposer*  
*48<sup>th</sup> Restaurant Associates LLC*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application

Serial No. 87/849,410

Mark: AVRA HOSPITALITY

Filing Date: March 26, 2018

-----	X	
48 <sup>TH</sup> RESTAURANT ASSOCIATES LLC,	:	
	:	
Opposer,	:	
	:	
-against-	:	Opposition No. 91/246,895
	:	
AVRA HOSPITALITY LLC,	:	
	:	
Applicant.	:	
-----	X	

**CERTIFICATE OF SERVICE**

I hereby certify that on September 3, 2019 a true and correct copy of Opposer's Motion to Suspend Opposition has been served on Applicant's attorney of record by e-mail at the following addresses:

Marcy L Sperry, Esq.  
Sperry IP Law LLC dba Vivid IP  
3 Alliance Center  
3550 Lenox Rd Ne  
21st Floor  
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docketing@vividip.com  
john@vividip.com  
marcy@vividip.legal  
alex@vividip.legal

/ryan s. klarberg/  
Ryan S. Klarberg

# EXHIBIT A

William Thomashower  
Joshua Weigensberg  
Ryan S. Klarberg  
PRYOR CASHMAN LLP  
7 Times Square  
New York, New York 10036  
Tel: (212) 421-4100  
*Attorneys for Plaintiff*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

48th RESTAURANT ASSOCIATES LLC

Plaintiff,

- against -

AVRA HOSPITALITY LLC,  
ANDREW CHAFOULIAS, and  
MIKI RADOVANOVIC

Defendants.

Civil Action No. 19-cv-7708

**COMPLAINT**

Plaintiff 48th Restaurant Associates LLC (“Plaintiff”), by its attorneys Pryor Cashman LLP, alleges as follows against defendants Avra Hospitality LLC (“Avra Hospitality”), Andrew Chafoulias (“Chafoulias”), and Miki Radovanovic (“Radovanovic”) (collectively, “Defendants”):

**NATURE OF ACTION**

1. This is an action for trademark infringement, unfair competition arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and for unfair competition and dilution under New York State law, as more fully described below. This action seeks damages and injunctive relief to halt Defendants’ willful trademark infringement, unfair competition and dilution, occurring and causing harm to Plaintiff in this District and elsewhere. After Defendants had direct knowledge of Plaintiff’s famous registered trademark AVRA® U.S. Reg. 2,493,466 for restaurants, and Plaintiff’s specific objections to Defendants’ proposed use of the term AVRA HOSPITALITY for

hotels and hotel management services, Defendants in or about June 2019 commenced unauthorized use in commerce of the term AVRA HOSPITALITY for business management of hotel services and staffing hotel restaurants. This ongoing infringement is causing irreparable harm to Plaintiff and its reputation.

2. For more than 20 years, Plaintiff has owned and operated highly unique, successful upscale restaurants and bars under its federally registered trademark, AVRA®. Plaintiff's first AVRA® restaurant opened in 1999 at 141 East 48<sup>th</sup> Street in New York City. Since then, Plaintiff has expanded its AVRA® brand restaurants and bars to two additional venues, on Madison Avenue in New York City and in Beverly Hills, California.

3. In disregard of Plaintiff's prior trademark registration and long-standing common law use of the AVRA® trademark, Defendant Avra Hospitality filed two "intent to use" U.S. trademark applications for virtually the same mark, AVRA HOSPITALITY, for hotel services and business management of hotels services, as Serial Nos. 87/717,456 (word mark) and 87/849,410 (word and design mark). Neither application reached registration and on March 11, 2019, Plaintiff, as Opposer, filed opposition in the United States Patent and Trademark Office, to the application Serial No. 87/849,410 for the AVRA HOSPITALITY word and design mark. The Notice of Opposition set forth in great detail the grounds for Plaintiff's objection to the application and the likelihood of confusion if Defendant Avra Hospitality were permitted to register its mark. Said Opposition is pending as No. 91246895. Thus, whatever, Defendants' original belief as to the similarity of the parties' marks and services, as of March 11, 2019, Defendants well knew of Plaintiff's objection and claims of likelihood of confusion as between Plaintiff's mark AVRA®, long previously used and registered, and Defendants' proposed mark, AVRA HOSPITALITY.

4. Despite Defendants' explicit knowledge of Plaintiff's objections to Defendants' intended use and proposed registration of the mark AVRA HOSPITALITY, in or about June 2019, Defendants commenced actual use of the AVRA HOSPITALITY mark for business management of hotels and a variation using "AVRA" as a stand-alone mark, including when referencing dining and beverage services. Defendant Avra Hospitality then filed a Statement of Use for AVRA HOSPITALITY in its word mark application Serial No. 87/717,456 on July 31, 2019, seeking to complete the registration with full knowledge of Plaintiff's objections. If that application is not withdrawn, Plaintiff intends to file a Cancellation Proceeding if the mark is allowed to register.

5. Defendants have thus commenced willful infringement of Plaintiff's Mark with full knowledge of same and of the grounds for Plaintiff's opposition based on likelihood of confusion of the parties' respective marks and services. Accordingly, Plaintiff was compelled to bring this infringement action to halt such use and applications, and obtain damages and injunctive relief.

### **PARTIES**

6. Plaintiff 48th Restaurant Associates LLC (as defined above, "Plaintiff") is a limited liability company organized and existing under the laws of the State of New York with a principal place of business at 1350 Avenue of the Americas, New York, New York 10019.

7. Upon information and belief, Defendant Avra Hospitality LLC (as defined above, "Avra Hospitality") is a limited liability company organized under the laws of Minnesota with an address of 30 3rd Street SE, #600, Rochester, MN 55094. Upon information and belief, Avra Hospitality is owned or controlled by Defendant Andrew "Andy" Chafoulias (as defined above, "Chafoulias"), its Chief Executive Officer, and Defendant Miki Radovanovic (as defined above, "Radovanovic"), its Chief Operating Officer. Upon information and belief, both Chafoulias and Radovanovic have business addresses in Rochester, MN. Upon information and belief, Chafoulias

and Radovanovic are the moving, active and conscious forces behind Defendant Avra Hospitality's choice of its name and the willful infringement of Plaintiff's Mark.

**JURISDICTION AND VENUE**

8. This case is a civil action arising under the Lanham Act, 15 U.S.C. § 1051, *et seq.* This Court has subject matter jurisdiction over the claims in this Complaint that relate to trademark infringement and unfair competition pursuant to 15 U.S.C. §§ 1114, 1121, 1125(a), 28 U.S.C. §§ 1331, 1338, 1367, and principles of supplemental jurisdiction.

9. This Court has supplemental jurisdiction over the claims in this Complaint that arise under the common law of the State of New York pursuant to 28 U.S.C. § 1367(a), because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

10. This Court has personal jurisdiction over Defendants because, upon information and belief, Defendants have committed infringing acts outside of New York causing injury to Plaintiff in New York, and Defendants regularly do or solicit business in New York, have directed their business efforts into New York and expect or reasonably should expect their infringing conduct to have consequences in New York and derive substantial revenue from interstate commerce. These activities fall within the long-arm statute for personal jurisdiction in the State of New York, C.P.L.R. §§ 301 and 302(a).

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants' acts are causing confusion of the public and injury to Plaintiff, or a likelihood such confusion and injury, within this District and elsewhere.

**FACTS COMMON TO ALL CLAIMS FOR RELIEF**

**I. Plaintiff and its Successful, AVRA® Restaurants**

12. For over 20 years, Plaintiff has used its famous and federally registered AVRA® trademark (the “Mark”) in connection with its AVRA® restaurants and bars in New York City, the first of which opened in 1999. Plaintiff’s AVRA® Mark is arbitrary and inherently distinctive for Plaintiff’s services of restaurants and bars.

13. Plaintiff’s business under the AVRA® Mark has been successful and expanding. Most recently, in April 2018, Plaintiff opened a new AVRA® restaurant and bar in Beverly Hills, California.

14. Plaintiff owns United States trademark registration U.S. Reg. No. 2,493,466, which was registered on the Principal Register on September 25, 2001, for the mark AVRA® for restaurant services.

15. A true and correct copy of Plaintiff’s valid and subsisting U.S. trademark registration for the AVRA® Mark, along with a copy of a USPTO TSDR printout showing Plaintiff’s registration for the Mark and Plaintiff as current owner, are annexed hereto as group **Exhibit A**.

16. Plaintiff’s registration and rights in the Mark are valid, subsisting and have become incontestable pursuant to 15 U.S.C. § 1065. Pursuant to 15 U.S.C. § 1115(b), Plaintiff’s Certificate of Registration constitutes conclusive evidence of the validity of the registered Mark and of Plaintiff’s exclusive right to use the AVRA® Mark in commerce in connection with restaurant services.



17. Moreover, Plaintiff's common law use of its Mark has for decades included a unique design font, using sharp contours for the turns in each letter and different thicknesses, as shown on its menus, advertising and websites as follows:



18. Plaintiff's AVRA® restaurants have provided millions of customers with a chic and high-quality dining experience, one known for its exotic decor, outstanding cuisine from award-winning executive chefs, and excellent service. In over 20 years, Plaintiff has served in excess of 3.5 million customers under its AVRA® Mark. In addition, Plaintiff's banquet services are marketed and sold to businesses to provide upscale banquets and parties for business events.

19. Plaintiff has invested millions of dollars to create, market, and advertise its AVRA® restaurants. The AVRA® restaurants combine innovative ambience, themes, decorations, luxurious and exotic interior design with live trees and sculptures, and an outstanding menu and service.

20. The design of the first AVRA® restaurant at 141 East 48th Street in Manhattan evokes a Villa in Greece, by creating an authentic, cozy Mediterranean atmosphere with imported limestone and distressed wood floors, stone washed walls, exposed wood beams, and French doors that open to a beautiful flowered courtyard. An open kitchen shows the preparation of a magnificent fresh fish display.

21. The design of the second New York City AVRA® restaurant at 14 East 60th Street is a bi-level venue that features a reflecting pool on the lower floor, a split-face stone feature wall manufactured from blocks at a Greek quarry, lemon trees at the entrance, and two custom wall-

mounted sculptures by artist Fernando Mastrangelo in the main dining room. These designs were developed by the award-winning New York City design firm Rockwell Group.

22. The design of the Beverly Hills AVRA® restaurant, also by Rockwell Group, includes sculpted drapes, a 1,500-pound wall sculpture, lemon trees in the dining room, and high ceilings with a skylight.

23. Plaintiff currently operates the dedicated websites <http://avrany.com> and <http://avrabeverlyhills.com>, which feature current menus, photographs, and online reservation systems.

24. The AVRA® Mark and restaurants have long been extensively advertised in a wide range of print and electronic media, and have been extensively used in interstate commerce over the last 20 years. Additionally, Plaintiff has received widespread, unsolicited media attention for its restaurants, which have been featured in prominent magazines, newspapers, media and electronic publications including the well-known Zagat® restaurant guide.

25. A compilation of true and correct copies of certain of Plaintiff's trademark uses of the AVRA® Mark is annexed hereto as group **Exhibit B**.

26. Plaintiff has achieved great success under its AVRA® Mark, with millions of dollars in annual revenue and millions of guests served since operations started more than 20 years ago.

27. Plaintiff's AVRA® restaurants attract a patronage that includes celebrities, professional athletes, financial and business leaders, and politicians, in addition to local residents and guests from foreign countries. Its AVRA® New York City restaurants have achieved a reputation as one of the most popular restaurants in Manhattan, with famous patronage that

includes A-listers, such as Tony Bennett, Woody Allen, Alexander Wang, Leonardo DiCaprio, Naomi Campbell, Al Pacino, and many more.

28. Likewise, Plaintiff's AVRA® restaurant in Beverly Hills has quickly achieved a reputation as a popular and successful restaurant drawing thousands of patrons. Celebrity guests have included Halle Berry, Cindy Crawford and Rande Gerber, Ellen Pompeo, Selma Blair, Nicole Scherzinger, Anthony Mackie and Michael Chiklis, among others.

29. Plaintiff's AVRA® Mark is widely recognized by the general consuming public and businesses, due to the great success and popularity of its restaurants and bars on both the East and West coasts, and to the patronage by high-profile celebrities and media coverage. By virtue of the aforesaid success, advertising and promotion, Plaintiff's Mark is now famous and widely known by the public, restaurant patrons, businesses, the restaurant industry, the media and others, who have come to identify the AVRA® Mark as indicating the single source of quality facilities, products and services offered by Plaintiff.

30. By reason of the foregoing, the AVRA® Mark used by Plaintiff in interstate commerce has come to enjoy a favored reputation and to create recognition of Plaintiff's restaurants and services and has obtained a secondary and distinctive meaning to identify Plaintiff as the sole source of AVRA® services and to distinguish Plaintiff's services from others. Plaintiff's AVRA® Mark has come to represent and symbolize extremely valuable goodwill belonging exclusively to Plaintiff.

31. By reason of the foregoing and over 20 years of exclusive and successful use of the AVRA® Mark, Plaintiff has extensive common law rights in and to the AVRA® Mark as a source identifier of Plaintiff's services.

## **II. Defendants Apply to Register the Infringing AVRA HOSPITALITY Mark**

32. Upon information and belief, Defendants became aware of Plaintiff's AVRA® Mark in or about December 2017, if not earlier, in connection with AVRA HOSPITALITY'S aforesaid U.S. trademark application.

33. Upon information and belief, Defendant Chafoulias personally selected the infringing mark AVRA HOSPITALITY, and he and Defendant Radovanovic subsequently adopted said infringing mark, for use in connection with Defendant Avra Hospitality's services.

34. Notwithstanding such knowledge, and notwithstanding Plaintiff's prior trademark registration of and prior rights in the AVRA® Mark, on December 12, 2017, and March 26, 2018, Defendant Avra Hospitality filed two intent-to-use U.S. trademark applications, respectively U.S. Application Serial Nos. 87/717,456 (word mark) for "Hotel services" (Class 43) and "Business management of hotel properties" (Class 35) and 87/849,410 (word and design mark) for the mark AVRA HOSPITALITY in design for "Hotel services" (Class 43) and " and "Business Management of hotel services" (Class 35) (the "Applications").

35. Plaintiff has continuously and exclusively used the AVRA® Mark in connection with its services long prior to the date upon which Defendant Avra Hospitality filed the Applications. Plaintiff's registration date is also long prior to Defendant Avra Hospitality's application dates. As such, Plaintiff has priority.

36. Plaintiff's AVRA® Mark is the virtually the same as the infringing AVRA HOSPITALITY Mark in sight, sound and connotation, and they create the same commercial impression. Other than the word "HOSPITALITY" (which Defendant Avra Hospitality has disclaimed in its Applications), the parties' marks are identical in the use of the arbitrary and

distinctive word “AVRA” which is dominant in both marks. Defendants have also commenced use of the plain word “AVRA” which is identical to Plaintiffs’ Mark.

37. In addition, the font and design of the word AVRA in the infringing AVRA HOSPITALITY mark, which Defendant Avra Hospitality describes in its word and design mark Application as a line “extend[ing] partially through the letters ‘A,’ ‘V,’ ‘R,’ and ‘A[,]”” bears a striking resemblance to Plaintiff’s common law use of its AVRA Mark as used at its restaurants and bars, both in the fonts and the appearance. Each of the letters in the infringing mark also uses the same sharp contours for the turns in the letters as found in Plaintiff’s common law AVRA Mark design. Defendants’ wavy lines through the letters further simulate the appearance of Plaintiff’s Mark. This similarity is apparent between the two marks, as shown below:



38. Defendants’ use of the identical arbitrary word AVRA and the adoption of similar font and design are striking. Particularly given Plaintiff’s registration, decades of national fame and widespread use, Defendants’ selection of the mark AVRA HOSPITALITY at the time Avra Hospitality filed its intent-to use application appears to be an attempt to trade on Plaintiff’s famous AVRA® Mark, name and goodwill.

39. The AVRA HOSPITALITY mark was applied for and is now being used in connection with services that are closely related and complementary to the restaurant services for which Plaintiff's Mark is registered and the restaurant and bar services for which Plaintiff has long-standing prior common law rights. Specifically, the relatedness of restaurant services and hotel services is well known. Both are within the hospitality industry and, in fact, many hotels operate restaurants of the same name or, at the very least, have restaurants operating on premises. Further, third-party trademark registrations often include both hotel and restaurant and bar services under the same mark. Thus, persons encountering the respective marks for the respective services are likely to believe that they originate from the same source or that there is some association between the sources.

40. On October 11, 2018, Plaintiff filed a request to extend the time to oppose Defendant Avra Hospitality's word and design mark trademark application for AVRA HOSPITALITY. Thus, Defendants, including, upon information and belief, Defendants Chafoulis and Radovanovic by virtue of their personal involvement with Defendant AVRA HOSPITALITY and with the United States Patent and Trademark Office proceedings, became aware of Plaintiff's objections to the intended use of AVRA HOSPITALITY at least as early as October 11, 2018.

41. On March 11, 2019, Plaintiff filed a notice of opposition to Defendant Avra Hospitality's word and design mark trademark application. Avra Hospitality answered on April 22, 2019. That proceeding is currently pending before the Trademark Trial and Appeal Board of the United States Patent and Trademark Office (Opposition number 91246895).

42. On or about July 31, 2019, Defendant Avra Hospitality requested that the United States Patent and Trademark Office delete "Hotel services" from its word mark Application Serial

No. 87/717,456 in an apparent concession that such services are highly similar to those Plaintiff provides and thus would increase the likelihood of confusion between the marks. However, such deletion does not avoid likelihood of confusion, since the services intended to be and now actually provided in Class 35 for “business management of hotel properties” are closely related and complementary to the restaurant and bar services under Plaintiff’s AVRA® Mark.

### **III. Defendants Commence Actual Use of the Infringing Mark**

43. Despite the pendency of Plaintiff’s opposition proceeding against Avra Hospitality’s intent-to-use trademark application, Defendants willfully and brazenly commenced actual use of the AVRA HOSPITALITY mark in or around June 2019. Worse yet, Defendants have begun using the standalone term, AVRA, in connection with Avra Hospitality’s hotel management services.

44. Specifically, the Avra Hospitality website is now live, at the URL [www.avrahospitality.com](http://www.avrahospitality.com). On that website, Defendants frequently refer to Avra Hospitality’s brand as the standalone term “Avra” – *i.e.*, a term indistinguishable from Plaintiff’s AVRA® Mark. The website is soliciting in this District and elsewhere with a section on its website called “Contact Us” for viewers to fill out and submit their name, email address, phone and a message online.

45. Defendants state on the Avra Hospitality website that “Avra manages a diverse portfolio of properties from premium-name brands to well-loved luxury boutique hotels” and that it provides a “Modern Approach to Hospitality & Hotel Management.” The [avrahospitality.com](http://avrahospitality.com) website is registered to “michelle.milde@hilton.com” who upon information and belief, in addition to having a Hilton.com email address is also a marketing manager for Defendant AVRA Hospitality. Defendants indicate on the website that Avra Hospitality presently manages at least

three Hilton-branded hotels in Minnesota and, in a national expansion, an inn called “Inn at Harbor Hill Marina” in the tri-state area, near New London, Connecticut.

46. Avra Hospitality has also become active on social media. On its Facebook accounts, LinkedIn accounts, and elsewhere, Avra Hospitality has listed a host of new job opportunities for hotel employee positions, including those relating to restaurants, showing Defendants’ expansion of the scope of its services and close relatedness to Plaintiff’s restaurant and bars services.

47. Certain of Defendants’ online uses of its infringing mark are particularly likely to exacerbate confusion with Plaintiff’s AVRA® Mark.

48. For example, Avra Hospitality has now advertised a number of “Avra Job Opportunities” (again adopting AVRA as a standalone mark) in the “Kitchen” and “Banquets” services categories, including positions for “Lobby Bartender” and “Banquet Server.” On its Facebook account, Avra Hospitality also recently posted images of a man (believed to be Defendant Radovanovic) cooking while wearing a chef’s outfit that prominently displays the infringing AVRA HOSPITALITY mark:





49. In its online use of the infringing AVRA HOSPITALITY mark, Avra Hospitality has often presented its mark with the following design elements, which are the same as its applied-for mark:



50. Defendants' infringing AVRA HOSPITALITY mark is also prominently displayed on the website of the Connecticut property Avra Hospitality manages, The Inn at Harbor Hill Marina (the "Connecticut Inn"), a property that is located within easy travelling distance from New York and that regularly attracts visitors from New York. The Connecticut Inn website

www.innharborhill.com states, “Managed By Avra Hospitality” on every page and is fully interactive, offering rooms, travel packages, contact information, and booking pages with the ability to make online reservations, under the AVRA HOSPITALITY mark. The infringing AVRA HOSPITALITY mark is prominently displayed on the site’s online booking webpages as users make reservations.

51. Upon information and belief, Internet users (including users located in New York) can also book reservations at the hotels managed by Avra Hospitality through various third-party travel websites, including www.booking.com, which is operating by Booking Holdings Inc., a corporation licensed to do business in the State of New York.

52. A compilation of true and correct copies of certain of Defendant’s online uses is annexed hereto as **Exhibit C**.

**FIRST CLAIM**  
**FEDERAL TRADEMARK INFRINGEMENT**  
**15 U.S.C. § 1114**

53. Plaintiff hereby repeats and realleges the foregoing Paragraphs of the Complaint as if fully set forth herein.

54. Plaintiff owns all right, title and interest in and to the AVRA® Mark, Registration No. 2,493,466.

55. Defendants have used in commerce, without Plaintiff’s permission, the AVRA HOSPITALITY trademark and the use of the stand-alone term AVRA in a manner that is likely to cause confusion or mistake or deceive purchasers as to the source of Defendants’ services and/or cause consumers to mistakenly believe that there is an affiliation, connection, approval, sponsorship or association of Plaintiff and/or Plaintiff’s goods, services and commercial activities,

on the one hand, with Avra Hospitality and/or its respective goods, services or commercial activities, on the other hand.

56. Defendants' acts constitute infringement of Plaintiff's registered AVRA® Mark under 15 U.S.C. § 1114(1).

57. As a direct and proximate result of Defendants' wrongful acts, Plaintiff has suffered and continues to suffer damage to its trademark rights, business reputation and goodwill.

58. Unless restrained, Defendants will continue to use one or more marks confusingly similar to the AVRA® Mark and will cause irreparable damage to Plaintiff. Plaintiff has no adequate remedy at law and is entitled to an injunction restraining Defendants, their respective officers, agents, and employees, and all persons acting in concert with Defendants, from engaging in further acts of infringement.

59. Plaintiff is further entitled to recover from Defendants the actual damages that it has sustained and/or is likely to sustain as a result of Defendants' wrongful acts.

60. Plaintiff is further entitled to recover from Defendants the gains, profits and advantages that Defendants have obtained as a result of their willful, wrongful acts.

61. Because of the willful nature of Defendants' wrongful acts, Plaintiff is entitled to an award of exemplary damages under the common law, and treble damages, increased profits and its reasonable attorneys' fees under 15 U.S.C. § 1117.

**SECOND CLAIM**  
**FEDERAL UNFAIR COMPETITION**  
**15 U.S.C. § 1125(a)**

62. Plaintiff hereby repeats and realleges the foregoing Paragraphs of the Complaint as if fully set forth herein.

63. Defendants' unauthorized adoption and use of a name, trademark, and logo style which are identical or nearly identical to Plaintiff's AVRA® Mark for use in connection with services that are similar, related and complementary to those Plaintiff provides to businesses and individual consumers, as hereinabove alleged, constitutes a use in interstate commerce and a false designation of origin or false and misleading description or representation of goods and services in commerce, with knowledge of the falsity, which is likely to cause confusion, mistake and deception, and in commercial advertising and promotion, misrepresents the nature, characteristics, qualities and origin of Defendants' commercial activities, within the meaning and in violation of 15 U.S.C. § 1125(a).

64. Defendants' unlawful acts in appropriating rights in the AVRA® Mark are and were intended to co-opt Plaintiff's goodwill for Defendants' own pecuniary gain.

65. Defendants' use of the infringing mark has caused or is likely to cause confusion and, unless enjoined, is likely to lead consumers to the mistaken belief that the business of Defendant Avra Hospitality originates from or is in some way associated with, affiliated with, connected to, related to, or sponsored or approved by Plaintiff.

66. Plaintiff does not now and has never sponsored or approved or authorized Defendants' use of the AVRA® Mark or other intellectual property of Plaintiff.

67. The aforesaid and continuing acts of Defendants infringes Plaintiff's AVRA® Mark and constitutes unfair competition in violation of 15 U.S.C. § 1125(a).

68. Plaintiff has been damaged by said infringement and unfair competition and has no adequate remedy at law for Defendants' continuing infringement. Plaintiff is entitled to an injunction restraining Defendants, their respective officers, agents, and employees, and all persons acting in concert with Defendants, from engaging in further acts of infringement and unfair

competition. Unless enjoined, Defendants' continuing infringement will cause irreparable harm to Plaintiff.

69. Plaintiff is further entitled to recover from Defendants the actual damages that it sustained and/or is likely to sustain as a result of Defendants' wrongful acts.

70. Plaintiff is further entitled to recover from Defendants the gains, profits and advantages that Defendants have obtained as a result of their willful wrongful acts.

71. Because of the willful nature of Defendants' wrongful acts, Plaintiff is entitled to an award of exemplary damages under the common law, and treble damages, increased profits and its reasonable attorneys' fees under 15 U.S.C. § 1117.

**THIRD CLAIM**  
**NEW YORK COMMON LAW UNFAIR COMPETITION**

72. Plaintiff hereby repeats and realleges the foregoing Paragraphs of the Complaint as if fully set forth herein.

73. Plaintiff owns all right, title and interest in and to the AVRA® Mark.

74. Business and individual consumers identify the AVRA® Mark exclusively with Plaintiff.

75. Plaintiff has expended substantial time, resources and effort to develop and obtain a strong reputation in the marketplace and enormous goodwill in the AVRA® Mark.

76. Defendants have infringed the AVRA® Mark through its use of the confusingly similar AVRA HOSPITALITY mark. Defendants' unlawful acts are intended to capitalize on Plaintiff's goodwill for Defendants' own pecuniary gain.

77. Defendants' use of the AVRA HOSPITALITY mark is calculated to and is likely to create confusion, deceive and mislead consumers into believing that Defendants' services originate with or are authorized by Plaintiff, or that Plaintiff is responsible for Avra Hospitality's

services, and is likely to cause confusion as to the source of Defendants' services, all to the detriment of Plaintiff.

78. Defendants' acts as alleged herein constitute unfair competition under the common law of New York and will, unless enjoined by the Court, continue to result in harm to the goodwill associated with Plaintiff.

79. Upon information and belief, Defendants committed the acts alleged herein willfully and with the intent to confuse the public and to injure Plaintiff.

80. The acts of Defendants have caused and are causing great and irreparable harm and damage to Plaintiff. Plaintiff has no adequate remedy at law and, and unless Defendants are permanently restrained and enjoined by this Court, such irreparable harm will continue.

81. As a direct and proximate result of Defendants' actions as stated herein, Plaintiff has suffered damage to its reputation and damage to the goodwill of its AVRA® Mark. Further, Plaintiff is entitled to exemplary damages as a result of Defendants' malicious actions as described above.

**FOURTH CLAIM**  
**VIOLATION OF N.Y. GENERAL BUSINESS LAW SEC. 360-1**

82. Plaintiff hereby repeats and realleges the foregoing Paragraphs of the Complaint as if fully set forth herein.

83. Plaintiff's trademark AVRA is arbitrary and inherently distinctive for restaurant and bar services. Plaintiff's AVRA trademark has been used successfully by Plaintiff for decades prior to Defendants' unauthorized adoption and use of the infringing mark AVRA HOSPITALITY and the stand alone term AVRA, and Plaintiff's Mark has gained tremendous renown and has acquired secondary meaning to uniquely identify Plaintiff's AVRA restaurants.

84. Defendants' aforesaid recent adoption and use of the nearly identical and infringing mark AVRA HOSPITALITY and the term AVRA and Defendants' wrongful conduct as hereinabove alleged are likely to cause and, upon information and belief, have caused injury to Plaintiff's business reputation and dilution or likely dilution of the distinctiveness of Plaintiff's renowned AVRA trademark, and are likely to or have disparaged, damaged and blurred and lessened the distinctiveness of Plaintiff's AVRA trademark by blurring said Mark.

85. Defendants' use of the mark AVRA HOSPITALITY and the term AVRA for services relating to hotels, restaurants and bars in the hospitality industry and for employment therein, is in a manner inconsistent with and diluting or likely to dilute the distinctive quality of Plaintiff's AVRA® trademark. As a result, Plaintiff's business reputation and good will and the favorable and distinctive association which Plaintiff's AVRA trademark has with the public have been and are likely to be impaired, damaged and diminished by blurring.

86. Upon information and belief, Defendants' infringing and diluting acts as hereinabove alleged have been done with predatory intent. Plaintiff has been damaged by said infringement and dilution and has no adequate remedy at law for Defendants' continuing infringement and dilution. Unless enjoined, Defendants' continuing infringement and dilution will cause irreparable harm to Plaintiff.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests judgment against Defendant as follows:

1. Preliminary and permanent injunctions enjoining Defendants, and their subsidiaries, partners, members, officers, agents, servants, employees, attorneys, and those in active concert or participation with them or any of them who receive actual notice of the order and judgment of this Court:

- a. from any further use of any name, or trademark, which includes in whole or in part the word “AVRA”;
- b. from using any other mark, word, name or symbol similar to Plaintiff’s AVRA® trademark which is likely to cause confusion, mistake or to deceive;
- c. from infringing Plaintiff’s rights in its aforesaid trademark, or using any colorable imitation thereof; and
- d. from continuing the acts of unfair competition and dilution herein complained of;

2. Pursuant to 15 U.S.C. § 1116(a), ordering Defendants to file with the Court and serve upon Plaintiff’s counsel, within thirty (30) days after service of the order of injunction, a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the injunction;

3. Ordering Defendants to expressly abandon any and all state and federal trademark applications seeking registration of a mark that includes in whole or in part the term AVRA, including, specifically, U.S. Trademark Application Nos. 87/717,456 and 87/849,410, or, if any such applications have been registered, ordering Defendants to expressly cancel any such registration and ordering the cancellation of any such registration pursuant to 15 U.S.C. § 1119;

4. Awarding Plaintiff all of Defendants’ profits, and Plaintiff’s damages by reason of the acts of trademark infringement, unfair competition and willful dilution complained of, said damages to be trebled pursuant to 15 U.S.C. § 1117;



5. Awarding Plaintiff punitive damages for Defendants' willful or reckless and continuing unfair competition and infringement of Plaintiff's rights continuing after actual or constructive notice of same;

6. Awarding Plaintiff its costs, expenses and reasonable attorneys' fees to the extent allowed by law; and

7. Awarding Plaintiff such other or further relief as the Court may deem just and proper.

Dated: New York, New York  
August 16, 2019

Respectfully submitted,

**PRYOR CASHMAN LLP**

By: S/ William Thomashower  
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*Attorneys for Plaintiff*  
*48th Restaurant Associates LLC*

# **EXHIBIT A**

**Int. Cl.: 42**

**Prior U.S. Cls.: 100 and 101**

**Reg. No. 2,493,466**

**United States Patent and Trademark Office**

**Registered Sep. 25, 2001**

**SERVICE MARK  
PRINCIPAL REGISTER**

**AVRA**

MOTORCYCLE EQUITIES (NEW YORK COR-  
PORATION)  
1370 AVENUE OF THE AMERICAS  
SUITE 203  
NEW YORK, NY 10019

FIRST USE 2-14-1999; IN COMMERCE 2-14-1999.


SN 75-869,249, FILED 12-13-1999.

FOR: RESTAURANT SERVICES, IN CLASS 42  
(U.S. CLS. 100 AND 101).

ROBERT C. CLARK JR., EXAMINING ATTORNEY

**BULK DATA:** Since May 7 at 12 a.m., the TSDR Application Programming Interface (API) has not included all information. Images of trademark registration certificates issued since July 2016 and some office actions are absent in the API. Customers who need to retrieve a copy of a registration certificate or an office action should download it directly from the TSDR documents tab.

**INTERMITTENT SYSTEM ISSUES:** Due to high-volume usage, you may experience intermittent issues on the Trademark Status and Document Retrieval (TSDR) system between 6 – 8 a.m. ET. Refreshing your web browser should resolve the issue. If you still need assistance accessing a document, email [teas@uspto.gov](mailto:teas@uspto.gov) and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

STATUS	DOCUMENTS	MAINTENANCE	<a href="#">Back to Search</a>	Print
<b>Generated on:</b> This page was generated by TSDR on 2019-08-16 13:30:10 EDT				
<b>Mark:</b> AVRA				
<b>AVRA</b>				
<b>US Serial Number:</b> 75869249		<b>Application Filing Date:</b> Dec. 13, 1999		
<b>US Registration Number:</b> 2493466		<b>Registration Date:</b> Sep. 25, 2001		
<b>Register:</b> Principal				
<b>Mark Type:</b> Service Mark				
<b>TM5 Common Status Descriptor:</b>		LIVE/REGISTRATION/Issued and Active		
		The trademark application has been registered with the Office		
<b>Status:</b> The registration has been renewed.				
<b>Status Date:</b> Jul. 01, 2011				
<b>Publication Date:</b> Aug. 22, 2000		<b>Notice of Allowance Date:</b> Nov. 14, 2000		
<b>▼ Mark Information</b> <span style="float: right;"><a href="#">Collapse All</a></span>				
<b>Mark Literal Elements:</b> AVRA				
<b>Standard Character Claim:</b> No				
<b>Mark Drawing Type:</b> 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)				
<b>▼ Goods and Services</b>				
<b>Note:</b>				
The following symbols indicate that the registrant/owner has amended the goods/services:				
<ul style="list-style-type: none"> <li>• Brackets [...] indicate deleted goods/services;</li> <li>• Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and</li> <li>• Asterisks *...* identify additional (new) wording in the goods/services.</li> </ul>				
<b>For:</b> restaurant services				
<b>International Class(es):</b> 042 - Primary Class		<b>U.S Class(es):</b> 100, 101		
<b>Class Status:</b> ACTIVE				

<b>Basis:</b>	1(a)		
<b>First Use:</b>	Feb. 14, 1999	<b>Use in Commerce:</b>	Feb. 14, 1999
<b>▼ Basis Information (Case Level)</b>			
<b>Filed Use:</b>	No	<b>Currently Use:</b>	Yes
<b>Filed ITU:</b>	Yes	<b>Currently ITU:</b>	No
<b>Filed 44D:</b>	No	<b>Currently 44E:</b>	No
<b>Filed 44E:</b>	No	<b>Currently 66A:</b>	No
<b>Filed 66A:</b>	No	<b>Currently No Basis:</b>	No
<b>Filed No Basis:</b>	No		
<b>▼ Current Owner(s) Information</b>			
<b>Owner Name:</b>	48th Restaurant Associates LLC		
<b>Owner Address:</b>	Suite 1925 1350 Avenue of the Americas New York, NEW YORK UNITED STATES 10019		
<b>Legal Entity Type:</b>	CORPORATION	<b>State or Country Where Organized:</b>	NEW YORK
<b>▼ Attorney/Correspondence Information</b>			
<b>Attorney of Record</b>			
<b>Attorney Name:</b>	William Thomashower		
<b>Attorney Primary Email Address:</b>	<a href="mailto:wthomashower@pryorcashman.com">wthomashower@pryorcashman.com</a>	<b>Attorney Email Authorized:</b>	Yes
<b>Correspondent</b>			
<b>Correspondent Name/Address:</b>	William Thomashower Pryor Cashman LLP 7 Times Square New York, NEW YORK UNITED STATES 10036		
<b>Phone:</b>	212-326-0811	<b>Fax:</b>	212-710-6097
<b>Correspondent e-mail:</b>	<a href="mailto:wthomashower@pryorcashman.com">wthomashower@pryorcashman.com</a> <a href="mailto:kholder@pryorcashman.com">kholder@pryorcashman.com</a> <a href="mailto:tmdocketing@pryorcashman.com">tmdocketing@pryorcashman.com</a>	<b>Correspondent e-mail Authorized:</b>	Yes
<b>Domestic Representative - Not Found</b>			
<b>▼ Prosecution History</b>			
<b>Date</b>	<b>Description</b>	<b>Proceeding Number</b>	
Oct. 11, 2018	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888	
Oct. 11, 2018	TEAS CHANGE OF OWNER ADDRESS RECEIVED		

Oct. 11, 2018	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Oct. 11, 2018	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Jul. 01, 2011	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	71378
Jul. 01, 2011	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Apr. 13, 2011	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	71378
Apr. 13, 2011	PAPER RECEIVED	
May 28, 2009	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Sep. 29, 2007	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	71378
Sep. 27, 2007	ASSIGNED TO PARALEGAL	71378
Sep. 25, 2007	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Sep. 25, 2007	TEAS SECTION 8 & 15 RECEIVED	
Sep. 24, 2007	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Sep. 24, 2007	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Jan. 23, 2007	CASE FILE IN TICRS	
Sep. 25, 2001	REGISTERED-PRINCIPAL REGISTER	
May 03, 2001	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Apr. 23, 2001	STATEMENT OF USE PROCESSING COMPLETE	
Mar. 09, 2001	USE AMENDMENT FILED	
Nov. 14, 2000	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Aug. 22, 2000	PUBLISHED FOR OPPOSITION	
Jul. 21, 2000	NOTICE OF PUBLICATION	
Jun. 29, 2000	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 16, 2000	EXAMINER'S AMENDMENT MAILED	
Jun. 09, 2000	NON-FINAL ACTION MAILED	
May 25, 2000	ASSIGNED TO EXAMINER	59500

### ▼ TM Staff and Location Information

#### TM Staff Information - None

#### File Location

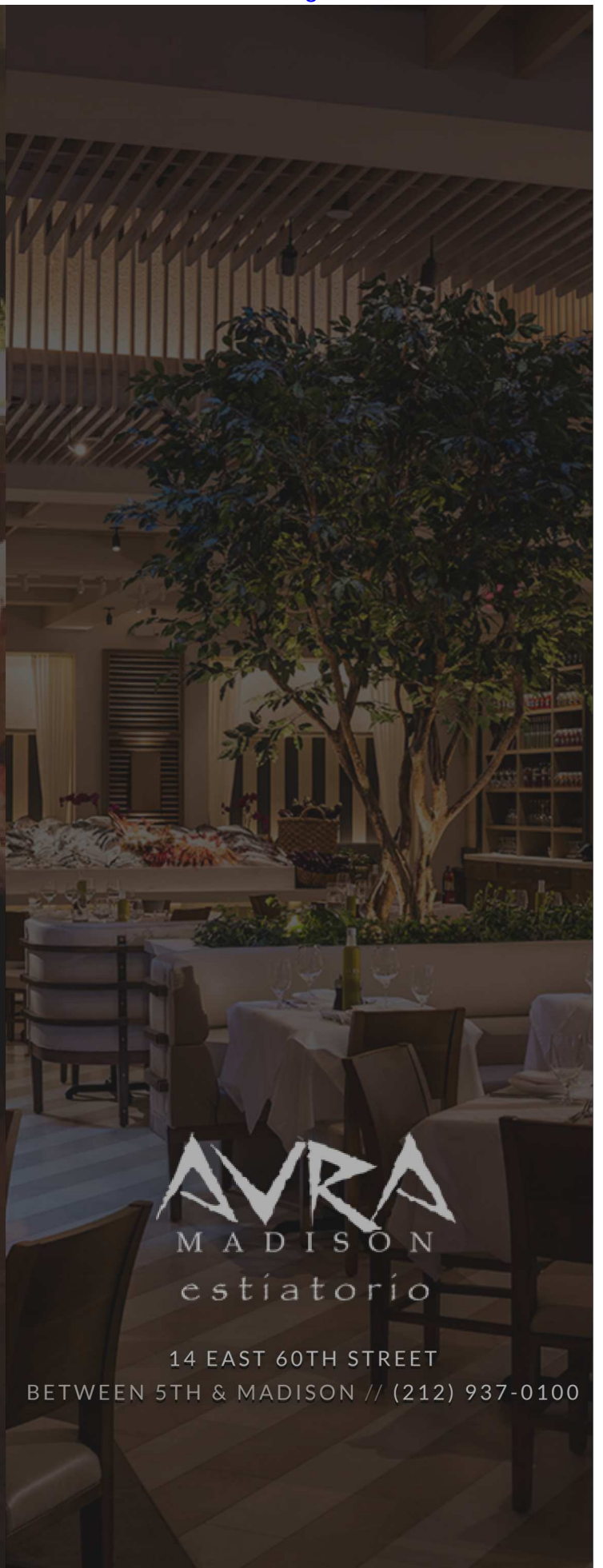
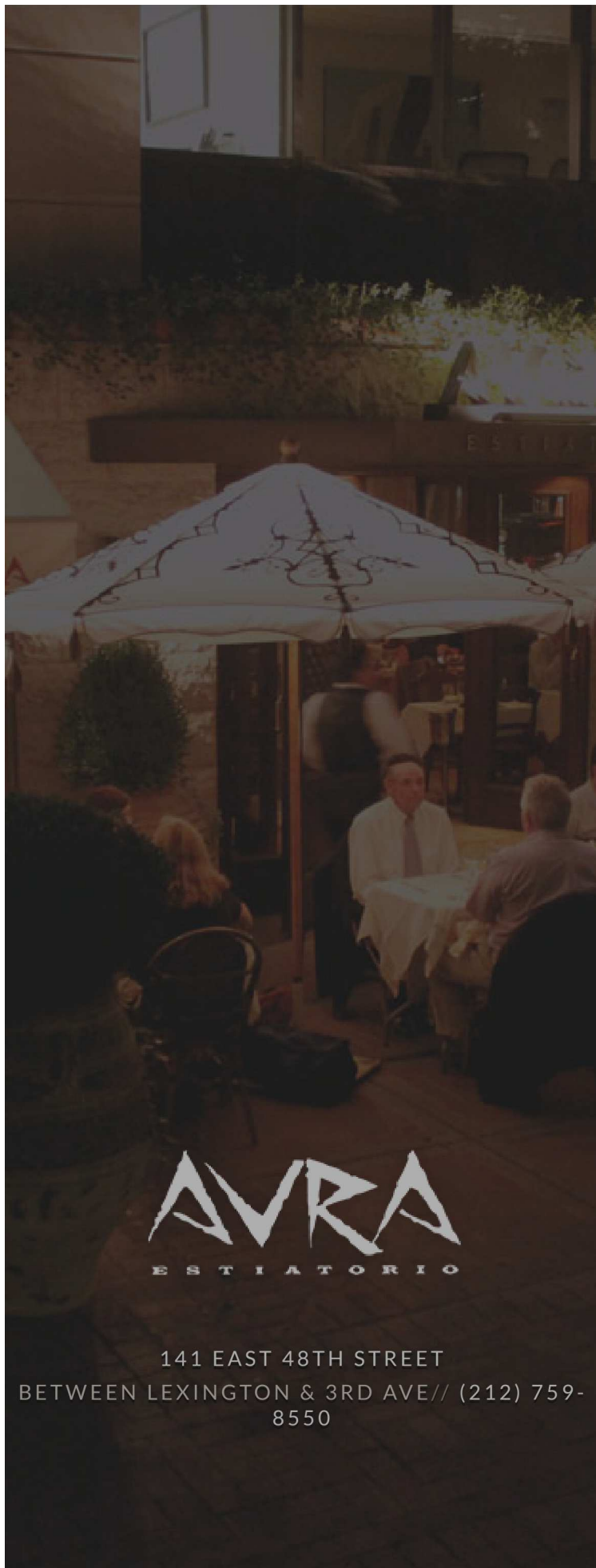
Current Location: GENERIC WEB UPDATE

Date in Location: Jul. 01, 2011

### ▼ Assignment Abstract Of Title Information - Click to Load

### ▼ Proceedings - Click to Load

# **EXHIBIT B**







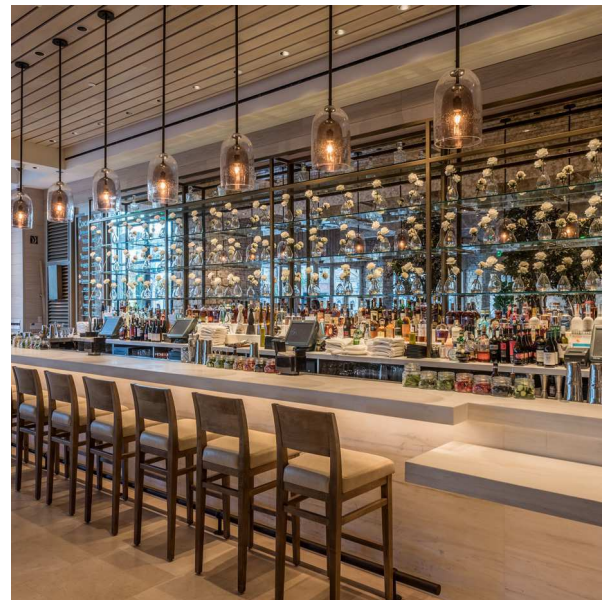
LOCATIONS GIFT CARDS DECOR ABOUT PRIVATE EVENTS EMPLOYMENT // (310) 734-0841



HOME

## WELCOME

New York City's famed, authentic Greek restaurant Avra Madison Estiatorio has opened its first west coast outpost, appropriately named **AVRA Beverly Hills**. Located in the "Golden Triangle" of Beverly Hills, AVRA Beverly Hills is designed by award-winning architecture and design firm Rockwell Group. The firm has created an atmosphere similar to that of an open-air villa in Greece, with fresh lemon trees, imported limestone, and stone washed walls. The new 11,000-square-foot eatery, with private spaces for all types of events, features traditional



Greek cuisine with an emphasis on fresh seafood.

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LOCATIONS DECOR ABOUT PRIVATE EVENTS GIFT CARDS EMPLOYMENT // (212) 937-0100



# **EXHIBIT C**

[Career Opportunities](#)

# Setting the Standard in Hospitality Management

A Modern Approach to Hospitality & Hotel Management

## Leaders In Our Business.

The hospitality industry is fast-paced and ever-changing, and growth in today's market demands a partner who understands the business from the inside out. That's where we come in. With Avra, industry expertise comes standard — we understand the complex challenges that come with hotel management, and we have the experience to navigate these challenges seamlessly. Together, we can take your property to the next level.

## What We Do

Partnering with Avra means leaving behind the burdens that come with hotel ownership. Everyday tasks like general hotel operation, staffing, bookkeeping and sales become our responsibility, and we ensure every aspect of our hotel property management is optimized to drive more profit at your property. Here are just a few of the services we provide to give your property the competitive edge it needs:

- Human resources
- Revenue enhancement
- Bookkeeping
- Marketing



- Day-to-day management

## Our Portfolio

Avra manages a diverse portfolio of properties from premium-name brands to well-loved luxury boutique hotels. Get a closer look at each of our locations here.



HILTON ROCHESTER MAYO CLINIC AREA



DOUBLETREE BY HILTON ROCHESTER



HILTON GARDEN INN ROCHESTER



INN AT HARBOR HILL

## Contact Us

A Hotel Management Company Unlike Any Other

First Name

Last Name

Email

Phone

Message

Submit

Avra Hospitality ©2019 | 150 S Broadway, Rochester, Minnesota 55904, US





# Avra Job Opportunities



Company Location ▾

Job Category ▾

Schedule ▾

Reset

Showing 21 of 21 opportunities

By Newest ▾

## PT Night Audit at DoubleTree

Aug 5, 2019

Front Desk

PTNIG01287

Part Time

Doubletree by Hilton  
150 S Broadway  
Rochester, MN 55904, USA

Accommodate hotel, patrons by registering and assigning rooms to guests, issuing room keys, transmitting and receiving messages, keeping records of occupied rooms and guests' accounts, making and confirming reservations, and presenting statements to and collecting payments from departing guests.

## Public Space at Hilton Garden Inn

Aug 5, 2019

Housekeeping

PUBLI01286

Full Time

Hilton Garden Inn  
225 Broadway Ave S  
Rochester, MN 55904, USA

Keep public space areas of hotel in clean and orderly condition. Perform heavy cleaning duties, such as cleaning floors, washing walls and glass, and removing rubbish. Light maintenance duties as requested by guests.

## Turndown/Housekeeping Attendant at Hilton

Jul 31, 2019

Housekeeping

TURND01284

Full Time

Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

A Turndown Attendant is responsible for cleaning and stocking guest rooms and providing turndown service in the hotels continuing effort to deliver outstanding guest service and financial profitability.

## Public Space PM at Hilton

Jul 31, 2019

Housekeeping

PUBLI01285

Full Time

Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

Overview Keep public space areas of hotel in clean and orderly condition. Perform heavy cleaning duties, such as cleaning floors, washing walls and glass, and removing rubbish. Light maintenance duties as requested by guests.

---

## Lobby Bartender at Hilton Garden Inn

Jul 30, 2019

 Kitchen  LOBBY01283  Full Time

Hilton Garden Inn  
225 Broadway Ave S  
Rochester, MN 55904, USA

Oversees bar activities to ensure excellent customer service, accurate cash drawer balancing and staff training

---

## Housekeeper at DoubleTree

Jul 30, 2019

 Housekeeping  HOUSE01279  Full Time

Doubletree by Hilton  
150 S Broadway  
Rochester, MN 55904, USA

To clean guest rooms and suites to ensure highest standards of cleanliness and service. Providing our guest with clean, home-away-from-home experience while staying with us.

---

## Bell Attendant at Hilton Garden Inn

Jul 30, 2019

 Front Desk  BELLA01281  Full Time

Hilton Garden Inn  
225 Broadway Ave S  
Rochester, MN 55904, USA

Handle baggage for guests at hotel. Provide exemplary customer service with every customer including valet service, local directions and local area information.

---

## Guest Service Agent at Hilton

Jul 29, 2019

 Front Desk  GUEST01277  Full Time

Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

Accommodate hotel, patrons by registering and assigning rooms to guests, issuing room keys, transmitting and receiving messages, keeping records of occupied rooms and guests' accounts, making and confirming reservations, and presenting statements to and collecting payments from departing guests.

---

## Night Audit at Hilton

Jul 29, 2019

 Front Desk NIGHT01278 Full Time

Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

Accommodate hotel, patrons by registering and assigning rooms to guests, issuing room keys, transmitting and receiving messages, keeping records of occupied rooms and guests' accounts, making and confirming reservations, and presenting statements to and collecting payments from departing guests. Is the Manager On Duty during the shift and is responsible for the entire hotel and it's operation.

---

## Housekeeping Inspector/Dispatch at Hilton

Jul 26, 2019

 Housekeeping HSKPI01276 Full Time


Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

Inspect guest rooms and public areas for compliance with established cleanliness and maintenance standards. Answer and direct all incoming phone calls in a courteous, respond to guest and employee's inquiries and dispatch appropriate service in a timely, friendly and efficient manner to ensure ultimate guest satisfaction

---

## Bell Attendant at Hilton

Jul 16, 2019

 Front Desk BELLA01275 Full Time

Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

Handle baggage for guests at hotel. Provide exemplary customer service with every customer including valet service, local directions and local area information.

---

## Banquet Server at DoubleTree

Jul 15, 2019

 Banquets BANQU01273 Part Time

Doubletree by Hilton  
150 S Broadway  
Rochester, MN 55904, USA

To provide exceptional service to all of our guest.

---

## Guest Service Agent at DoubleTree

Jul 10, 2019

 Front Desk GUEST01265 Full Time

Doubletree by Hilton  
150 S Broadway  
Rochester, MN 55904, USA

Accommodate hotel patrons by registering and assigning rooms to guests, issuing room keys, transmitting and receiving messages, keeping records of occupied rooms and guests' accounts, making and confirming reservations, and presenting statements to and collecting payments from departing guests.

---

## Housekeeper at Hilton Garden Inn

Jun 26, 2019

 Housekeeping  HOUSE01266  Full Time

Hilton Garden Inn  
225 Broadway Ave S  
Rochester, MN 55904, USA

To clean guest rooms and suites to ensure highest standards of cleanliness and service. Providing our guest with clean, home-away-from-home experience while staying with us.

---

## Housekeeper at Hilton

Jun 24, 2019

 Housekeeping  HOUSE01264  Full Time

Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

To clean guest rooms and suites to ensure highest standards of cleanliness and service. Providing our guest with clean, home-away-from-home experience while staying with us.

---

## Housekeeping Internship

Jun 3, 2019

 Housekeeping  HOUSE01262  Full Time

Hilton Garden Inn  
225 Broadway Ave S  
Rochester, MN 55904, USA

To clean guest rooms and suites to ensure highest standards of cleanliness and service. Providing our guest with clean, home-away-from-home experience while staying with us.

---

## Guest Service Agent at Hilton Garden Inn

May 31, 2019

 Front Desk  GUEST01261  Part Time

Hilton Garden Inn  
225 Broadway Ave S  
Rochester, MN 55904, USA

Accommodate hotel patrons by registering and assigning rooms to guests, issuing room keys, transmitting and receiving messages, keeping records of occupied rooms and guests' accounts, making and confirming reservations, and presenting statements to and collecting payments from departing guests.

---

## Concierge Supervisor at Hilton

May 23, 2019

 Kitchen  CONCI01255  Full Time

Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

Provide leadership for Concierge staff, and maintain hotel standards and policies. Exemplify expected demeanor, customer service and professionalism for all employees to mirror

---

## Concierge at Hilton

May 23, 2019

 Kitchen  CONCI01250  Full Time

Hilton Rochester Mayo Clinic Area  
10 East Center St  
Rochester, MN 55904, USA

To ensure the best possible service to all guests utilizing the Executive lounge amenities.

---

## Concierge at DoubleTree

May 22, 2019

 Kitchen  CONCI01251  Full Time

Doubletree by Hilton  
150 S Broadway  
Rochester, MN 55904, USA

To ensure the best possible service to all guests utilizing the Executive lounge amenities.

---

## Night Audit at Hilton Garden Inn

May 14, 2019

 Front Desk  NIGHT01248  Part Time

Hilton Garden Inn  
225 Broadway Ave S  
Rochester, MN 55904, USA

Accommodate hotel, patrons by registering and assigning rooms to guests, issuing room keys, transmitting and receiving messages, keeping records of occupied rooms and guests' accounts, making and confirming reservations, and presenting statements to and collecting payments from departing guests. Is the Manager On Duty during the shift and is responsible for the entire hotel and it's operation.

---

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# EXHIBIT T



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

48<sup>th</sup> RESTAURANT ASSOCIATES, LLC,

Plaintiff,

v.

AVRA HOSPITALITY, LLC,  
ANDREW CHAFOULIAS, and  
MIKI RADOVANOVIC

Defendants.

Civil Action No. 1:19-cv-07708-VSB

**NOTICE OF MOTION TO  
DISMISS PLAINTIFF'S  
COMPLAINT**

**PLEASE TAKE NOTICE** that upon the upon the accompanying Defendants Avra Hospitality, LLC, Andrew Chafoulis and Miki Radovanovic's Memorandum of Law in Support of their Motion to Dismiss, and all the papers and proceedings previously had herein, Defendants Avra Hospitality, LLC, Andrew Chafoulis and Miki Radovanovic (collectively, "Defendants"), by their attorneys, Stokes Wagner, ALC, will move this Court before the Honorable Vernon S. Broderick, at the Thurgood Marshall United States Courthouse, Southern District of New York, 40 Foley Square, Courtroom 518, New York, New York 10007, on a date and time to be designated by the Court, for an Order, pursuant to Fed. R. Civ. P. 12(b)(2), to dismiss Plaintiff's Complaint against the Defendants in the entirety for lack of personal jurisdiction and Fed. R. Civ. P. 12(b)(3) for improper venue, along with such other and further relief as the Court may deem just and proper.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to Rule 6.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, Plaintiff shall serve and file any opposing affidavits and opposing memoranda within fourteen (14) days of service of the Defendants' Motion to Dismiss Plaintiff's Complaint, and the Defendants shall serve

and file reply affidavits and memoranda of law within seven (7) days after service of the answering papers.

Dated: Ithaca, New York  
September 12, 2019

**STOKES WAGNER, ALC**

By: /s/ Hayden Pace  
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Ithaca, New York 14850  
(607) 257-5165 – Telephone

*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing “Notice of Motion to Dismiss Plaintiff’s Complaint” with the Clerk of the Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following counsel of record:

Joshua Avram Weigensberg, Esq.  
Ryan Klarberg, Esq.  
William J. Thomashower, Esq.  
**PRYOR CASHMAN LLP**  
7 Times Square  
New York, New York 10036

This 12<sup>th</sup> day of September, 2019.

**STOKES WAGNER, ALC**

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*Attorneys for Defendants*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

48<sup>th</sup> RESTAURANT ASSOCIATES, LLC,

Plaintiff,

v.

AVRA HOSPITALITY, LLC,  
ANDREW CHAFOULIAS, and  
MIKI RADOVANOVIC

Defendants.

Civil Action No. 1:19-cv-07708-VSB

**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

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Defendants Avra Hospitality, LLC (“Avra Hospitality”), Andy Chafoulis, and Miki Radovanovic (collectively “Defendants”) hereby specially appear and submit this Memorandum of Law in support of their Motion to Dismiss the Complaint filed by Plaintiff 48<sup>th</sup> Restaurant Associates, LLC (“Plaintiff”) (the “Motion”). As grounds for their Motion, Defendants state as follows:

### **PRELIMINARY STATEMENT**

This memorandum of law is submitted by Defendants in support of their motion to dismiss Plaintiff’s complaint pursuant to FRCP 12(b)(2) for lack of personal jurisdiction and FRCP 12(b)(3) for improper venue. As more fully set forth below, claims against all three Defendants, the corporate entity and its officers, must be dismissed because this Court lacks personal jurisdiction over Defendants. Avra Hospitality is a company organized under the laws of Minnesota and has no contacts, let alone minimum contacts, with New York, that would justify the Court’s personal jurisdiction over it. Likewise, Avra Hospitality’s officers, Miki Radovanovic and Andy Chafoulis, are Minnesota residents who also lack the requisite contact with the State of New York to justify this Court’s exercise of jurisdiction over them.

In addition, Defendants move to dismiss this action for improper venue. The substantial part of Defendants’ alleged acts of infringement occurred in Minnesota, and Plaintiff has failed to assert any allegations to the contrary. Furthermore, the majority of the witnesses and documents are located in Minnesota, where the Defendants reside and conduct business.

### **FACTUAL BACKGROUND**

#### **A. Procedural History**

Prior to filing this Complaint, on March 11, 2019, the Plaintiff filed Trademark Opposition Number 91246895 (“Opposition”) against Defendant Avra Hospitality’s trademark application for



the mark AVRA HOSPITALITY & Design (the “Mark”) with the Trademark Trial and Appeal Board. Thereafter, the Plaintiff and Avra Hospitality were engaged in discovery relating to the Opposition. The Plaintiff served discovery requests on Avra Hospitality on June 14, 2019, and Avra Hospitality served its discovery requests on Plaintiff on July 17, 2019. Avra Hospitality responded to Plaintiff’s discovery requests in a timely manner on August 14, 2019. Plaintiff, however, in a cunning act of gamesmanship, requested an extension of time to serve its responses to Avra Hospitality’s discovery requests. Then, a mere seven (7) days before its discovery responses were due, Plaintiff filed this lawsuit at the eleventh hour, thereby preventing Avra Hospitality from benefitting from Plaintiff’s responses to its discovery requests.

On September 3, 2019, Plaintiff filed a Motion to Suspend the Opposition and Defendant Avra Hospitality intends to file a Motion to Oppose Suspension and Compel Plaintiff’s responses to its discovery requests.

## **B. Relevant Facts**

The Complaint alleges that Defendants infringed upon plaintiff’s “famous registered trademark” by using the term “AVRA HOSPITALITY” (the “Mark”) in commerce for “business management of hotel services and staffing hotel restaurants.” Plaintiff’s Complaint (“Compl.”) at ¶1. According to the Complaint, Defendants’ use of the Mark is allegedly causing irreparable harm to Plaintiff and the two restaurants that it owns and operates, which are located in New York City, New York and Beverly Hills, California. *Id.* at ¶¶1,2.

Avra Hospitality is a hotel management company that provides management services, including operational services, human resource services, revenue enhancement, bookkeeping services, and marketing services, to hotel owners. Declaration of Miki Radovanovic (“Radovanovic Dec.”) at ¶3. Currently, Defendant Avra Hospitality manages four hotels, including

three Hilton-branded hotels located in Rochester, Minnesota and the “Inn at Harbor Hill” located in New London, Connecticut. *Id.* at ¶4. Defendant Avra Hospitality does not hold an ownership interest in any of these four hotels. *Id.*

As Plaintiff concedes in its Complaint, Avra Hospitality is a limited liability company organized under the laws of Minnesota with its and principal place of business located in Rochester, Minnesota. Compl. at ¶7. Notably, Avra Hospitality does not manage any hotels located anywhere within the State of New York, nor does it own or maintain offices in New York. Radovanovic Dec. at ¶¶5,6. Furthermore, Defendant Avra Hospitality does not have any assets in New York, does not transact business in New York, and all of its employees are based or work in Minnesota or Connecticut. Radovanovic Dec. at ¶¶5-7.

Despite the foregoing, Plaintiff alleges that these Defendants are subject to personal jurisdiction in this Court. However, as explained in more detail below, Plaintiff’s contentions are unfounded. Avra Hospitality is not soliciting customers or engaging in any sales transactions with consumers located in New York. Radovanovic Dec. at ¶11. Avra Hospitality is a business-to-business company and does not engage in sales directly with consumers.<sup>1</sup> Instead, consumers interact directly with Avra Hospitality’s clients (i.e., the owners of the hotels) and book rooms through websites maintained by those hotel owners, hotel brands, and certain third-party booking agents – notably, not Avra Hospitality. *Id.* In fact, Avra Hospitality’s website is **not** configured to process, transact, or engage in any sales with consumers, and consumers are **not** able to book hotel rooms in any of the hotels managed by Avra Hospitality using its website. *Id.* at ¶12. Instead, the website is solely informational in nature – providing hotel owners of hotels with information about

---

<sup>1</sup> Of significance, Defendant Avra Hospitality is a business-to-business company that provides business management services to hotel companies who desire an outside company to manage their operations. *See* Radovanovic Dec. at ¶3. By contrast, Plaintiff is a business-to-consumer company. Plaintiff provides goods and services to consumers, i.e. customers at their restaurants. Compl. at ¶2.

services and experience provided by Avra Hospitality. *Id.* The “Contact Us” portal, cited in the Plaintiff’s Complaint (Compl. ¶44) was designed for the purpose of allowing hotel owners to provide their contact information for the purposes of obtaining more information regarding Avra Hospitality’s hotel management services. *Id.* at ¶13. If someone were to enter information using this portal, an email would be sent to Defendant Miki Radovanovic or the Marketing Director. But, as Mr. Radovanovic has attested, other than the initial submission that was sent internally to test the portal’s operability when the website was launched, Avra Hospitality has not received any other submissions through the “Contact Us” portal, and he is unaware of a single instance in which Avra Hospitality has been contacted by a New York consumer as a result of the website or online presence. *Id.* at ¶14.

Avra Hospitality’s officers, Defendant Andy Chafoulis (“Chafoulis”) and Defendant Miki Radovanovic (“Radovanovic”), are also not subject to the jurisdiction of this Court. As set forth in their supporting declarations, both Mr. Chafoulis and Mr. Radovanovic reside in Rochester, Minnesota. Chafoulis Dec. at ¶9; Radovanovic Dec. at ¶15. Moreover, Neither Mr. Radovanovic nor Mr. Chafoulis, in their personal capacity, own, lease, or rent any real or personal property located in New York, maintain any bank accounts in New York, own any assets located in New York, file taxes in New York or maintain a valid New York drivers license. Chafoulis Dec. at ¶5; Radovanovic Dec. at ¶9.

In sum, Defendants clearly do not have, nor have they ever had, any presence in New York that would enable this Court to exercise jurisdiction over them.

## **ARGUMENT**

### **I. THIS COURT SHOULD DISMISS THE COMPLAINT FOR LACK OF PERSONAL JURISDICTION.**

Where a party moves to dismiss an action for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2), the plaintiff bears the burden of showing that the court has jurisdiction over the defendant. *Tanner v. Heath Graphics LLC*, No. 115CV0098LEKCFH, 2017 WL 922013, at \*3 (N.D.N.Y. Mar. 8, 2017). While a plaintiff need only make a prima facie showing of personal jurisdiction over a defendant, “[a] prima facie showing of jurisdiction ‘does not mean that plaintiff must show only some evidence that defendant is subject to jurisdiction; it means that plaintiff must plead facts which, if true, are sufficient in themselves to establish jurisdiction.’ ” *Tanner* at \*3 (N.D.N.Y. Mar. 8, 2017). Pleadings that assert only “conclusory non-fact-specific jurisdictional allegations” or state a “legal conclusion couched as a factual allegation” do not meet this burden, *Id.* (citing *Jazini v. Nissan Motor Co.*, 148 F.3d 181, 185 (2d Cir. 1998)), and the Court should “not draw ‘argumentative inferences’ in the plaintiff’s favor.” *Robinson v. Overseas Military Sales Corp.*, 21 F.3d 502, 507 (2d Cir. 1994) (citation omitted).

In the instant action, Plaintiff offers conclusory, non-fact specific allegations to support its assertion of jurisdiction over Defendants, and the fact-specific allegations it does offer fall short because, even if proven true, they are legally insufficient to establish jurisdiction over Defendants. Specifically, the jurisdictional facts alleged are:

- This Court has personal jurisdiction over Defendants because, ... Defendants have committed infringing acts outside of New York causing injury to Plaintiff in New York, and Defendants regularly do or solicit business in New York, have directed their business efforts into New York and expect or reasonably should expect their infringing conduct to have consequences in New York and derive substantial revenue from interstate commerce.

These activities fall within the long-arm statute for personal jurisdiction in the State of New York, C.P.L.R. §§301 and 302(a).<sup>2</sup> Compl. at ¶10.

- The [Avra Hospitality] website is soliciting in this District...with a section on its website called “Contact Us” for viewers to fill out and submit their name, email address, phone and a message online. Compl. at ¶44.
- Defendants’ infringing [Mark] is also prominent displayed on the website of the Connecticut property Avra Hospitality manages, ... a property that is located within easy travelling distance from New York and that regularly attracts visitors from New York. *Id.* at ¶50.
- Upon information and belief, Internet users (including users located in New York) can also book reservations at the hotels managed by Avra Hospitality through various third-party travel websites, including [www.booking.com](http://www.booking.com), which is operating by Booking Holdings, Inc., a corporation licensed to do business in the State of New York. *Id.* at ¶51.

In evaluating jurisdiction, New York courts first look to the New York long-arm statute, codified at C.P.L.R. §§ 301-302. If jurisdiction over a defendant is available under the long-arm statute, the Court must determine whether the exercise of jurisdiction comports with the due process requirements of the Fourteenth Amendment of the U.S. Constitution. *777388 Ontario Ltd. v. Lencore Acoustics Corp.*, 142 F.Supp. 2d 309, 316 (E.D.N.Y. 2001).

**A. General Jurisdiction Under C.P.L.R. §301 Does Not Exist.**

New York courts may not exercise general jurisdiction over a defendant under the United States Constitution or under C.P.L.R. §301 unless the defendant is served with process in the state, domiciled in the state or, in an exceptional case, where an individual’s contacts with a forum are so extensive as to support general jurisdiction notwithstanding domicile elsewhere. *Jonas v. Estate of Leven*, 116 F. Supp. 3d 314, 323 (S.D.N.Y. 2015). It is well established in this Circuit that “for an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is [the place] in which the corporation is fairly regarded as at home.”

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<sup>2</sup> Merely reciting the language in New York’s long-arm statute is a clear example of Plaintiff’s conclusory allegations.

*Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014); *Reich v. Lopez*, 38 F. Supp. 3d 436, 455 (S.D.N.Y. 2014), *aff'd*, 858 F.3d 55 (2d Cir. 2017) (internal citation omitted). “The mere fact that an individual or a corporation operates in many places does not imply that they are deemed as home in all of them.” *Reich* at 457. In the present case, Plaintiff fails to show either that Defendants are domiciled in New York or that Defendants’ contacts with New York are so extensive as to support this Court’s finding of general jurisdiction.

i. Defendant Avra Hospitality is not subject to the general jurisdiction of this Court.

A district court's general jurisdiction does not lie over a corporate party in a forum where that entity is neither incorporated nor maintains its principal place of business. *Corley v. Vance*, 365 F. Supp. 3d 407 (S.D.N.Y. 2019); *Daimler AG v. Bauman*, 134 S. Ct. 746, 761 (2014)) (“[t]he only kind of corporate activity that ordinarily will satisfy the general jurisdiction test is incorporation in the state or maintenance of a corporation’s principal place of business in the state.”). Since Plaintiff concedes that Avra Hospitality is organized under the laws of the State of Minnesota and its principal place of business is located in Rochester, Minnesota, Compl. at ¶7, Defendants are subject to general jurisdiction only if the “[company’s] affiliations with [New York are] so continuous and systematic as to render it essentially at home in the forum state.” *Corley*, 365 F. Supp. 3d at 407 (S.D.N.Y. 2019).

Under New York law, the factors considered in determining whether a foreign corporation's activities in New York are sufficiently “continuous and systematic” to establish general jurisdiction are...(1) the existence of an office in the forum, (2) the solicitation of business in the state, (3) bank, accounts, and other property in the state, and (4) the presence of employees of the foreign corporation in the state.”

*Chatwal Hotels & Resorts LLC v. Dollywood Co.*, 90 F. Supp. 3d 97 (S.D.N.Y. 2015). None of these factors are present here. Avra Hospitality does not maintain an office in New York. Radovanovic Dec. at ¶¶6,7. Avra Hospitality does not maintain any bank accounts in New York.

*Id.* at ¶6. Further, none of its property or assets are located in New York. *Id.* Lastly, Avra Hospitality does not have any employees located in New York; all of its employees reside and work in Rochester, Minnesota with the limited exception of those employees assigned to work at the “Inn of Harbor Hill” in Connecticut. *Id.* at ¶¶6,7.

Since Avra Hospitality is not organized under New York law, does not maintain its principal place of business in New York and lacks ‘continuous and systematic’ affiliations with New York which would render it ‘at home’ in New York, this Court lacks general jurisdiction over Avra Hospitality.

ii. Defendants Chafoulis and Radovanovic are not subject to the general jurisdiction of this Court.

General jurisdiction exists over an individual defendant in that individual’s domicile. *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). Plaintiff’s Complaint fails to show that either Mr. Chafoulis or Mr. Radovanovic are domiciled<sup>3</sup> in New York. In fact, the Complaint is devoid of *any* allegations concerning their domicile, merely stating that “both Chafoulis and Radovanovic have business addresses in Rochester, MN.” Compl. at ¶7. Neither Chafoulis nor Radovanovic own residential property in New York; file taxes in New York; hold a driver’s license in New York; are registered to vote in New York; maintain a personal bank account in New York; or own any real or personal property located in New York. Chafoulis ¶5; Radovanovic ¶9

In addition, there are no allegations in the Complaint to support a finding that either or both defendants ‘continuously and systematically’ transact business in New York. For these reasons, there is insufficient information before this Court for it to conclude that general jurisdiction exists over Mr. Chafoulis and/or Mr. Radovanovic.

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<sup>3</sup> This Circuit defines a person’s “domicile” as “the place where a person has his true fixed home and principal establishment, and to which, whenever he is absent, he has the intention of returning.” *Hai Yang Liu v. 88 Harborview Realty, LLC*, 5 F. Supp. 3d 443, 446 (S.D.N.Y. 2014) (quotation marks and citation omitted).

**B. Specific Jurisdiction Under C.P.L.R. §302 Does Not Exist.**

A non-domiciliary defendant may be subject to New York’s long-arm statute if he engages in the following acts either in person or through an agent and such acts relate to an asserted claim: (1) transacts any business within the state or contracts anywhere to supply goods or services in the state; (2) commits a tortious act within the state; (3) commits a tortious act outside the state but injures a person or property in the state; or (4) owns, uses, or possesses any real property in the state. C.P.L.R. § 302(a). Plaintiff’s Complaint specifically alleges that specific jurisdiction exists as to Defendants based on C.P.L.R. § 302(a)(3) and does not list any other subsection of the long-arm statute as a basis for specific jurisdiction. *See* Compl. at ¶10. Section 302(a)(3) provides that a tortious act committed outside New York that causes injury to a person within New York<sup>4</sup> may be a basis for personal jurisdiction, provided the defendant either, (1) “regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered” in New York, C.P.L.R. § 302(a)(3)(i), or (ii) “expects or should reasonably expect the act to have consequences in [New York] and derives substantial revenue from interstate or international commerce,” C.P.L.R. § 302(a)(3)(ii). For the reasons set forth below, plaintiff cannot satisfy either §302(a)(3)(i) or (ii) as to any of the Defendants and thus jurisdiction as to Defendants on this basis is improper.

i. Defendants do not regularly do, or solicit, business, or engage in any other persistent course of conduct in New York.

Plaintiff cannot demonstrate that Defendants regularly solicit business in New York or engage in any persistent course of conduct in New York. Plaintiff alleges, albeit in a conclusory

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<sup>4</sup> For the purpose of this Motion, Defendants acknowledge that Plaintiff has sufficiently pled that a tortious act was committed outside of New York that caused injury to Plaintiff, a company with a restaurant located in New York City, New York.



manner, that Defendants transact business in New York and solicit business in New York through Avra Hospitality's website. *See* Compl. at ¶¶10, 44 (The [Avra Hospitality] website is soliciting in this District...with a section on its website called "Contact Us" for viewers to fill out and submit their name, email address, phone and a message online.). However, Plaintiff's reliance upon this website is misguided because this website is properly characterized as "passive" and thus is insufficient to support a finding a jurisdiction under New York's long-arm statute.

It is well established under New York law that if a website is "passive," meaning customers cannot purchase anything through the website and the only exchange of information is a direct link allowing a user to contact a seller, the website will not support a finding of personal jurisdiction. *See Skrodzki v. Marcello*, 810 F. Supp. 2d 501 (E.D.N.Y. 2011) (In order to determine whether a website constitutes transacting business for purposes of personal jurisdiction under New York's long-arm statute, courts look to the level of interactivity and commercial nature of the exchange of information that occurs on a website); *see also Mink v. AAAA Development, LLC*, 190 F.3d 333, 336–37 (5th Cir.1999) (declining to find personal jurisdiction where defendant operated an Internet website that was accessible by residents in the forum state but "[t]here was no evidence that [the defendant] conducted business over the Internet by engaging in business transactions with forum residents or by entering into contracts over the Internet."). Furthermore, a website is still considered passive and insufficient to confer jurisdiction where, as here, the only purported "exchange of information" available on the website is a direct link allowing a user to contact the seller. *See Stephan v. Babysport, LLC*, 499 F.Supp.2d 279, 288 (E.D.N.Y.2007) (holding that the defendant's website was 'passive' where website did "little more than make information available to those who are interested...") (internal quotation marks omitted); *Yanouskiy v. Eldorado Logistices Sys., Inc.*, No. 05–CV–2202, 2006 WL 3050871, at \*3 (E.D.N.Y. Oct. 20, 2006)

(“Specifically, the website contains a contact information page where viewers may leave their e-mail address and a short message, both of which will presumably be transmitted to [defendant] after the viewer clicks ‘submit query.’ However, the mere ability to contact defendant, standing alone, establishes nothing for purposes of this Court's general jurisdiction analysis.”). A website that allows for the exchange of information and/or a user to contact a seller is insufficient to demonstrate that website operator has purposefully availed itself of the privilege of conducting activities within New York under the long-arm statute.” *Skrodzki, supra* at 515 (E.D.N.Y. 2011); *Girl Scouts of U.S. v. Steir*, 102 F. App'x 217, 220 (2d Cir. 2004) (“the mere fact that the [defendants’] website, which invites only limited interactive content, is continuously accessible to New York residents does not establish the sort of persistent course of conduct in the state fairly to require the [defendants] to answer in New York for their out-of-state actions in maintaining the website.”).

As evidenced by the attestations of Defendant Radovanovic, the quality and nature of the Avra Hospitality website does not militate in favor of personal jurisdiction. The website is not configured to process, transact or engage in any sales, and a consumer is not able to book rooms in any of hotels managed by Avra Hospitality using this website. Radovanovic Dec. at ¶12. Instead, the website is solely informational in nature – and is simply provided so that owners of hotels may learn about Avra’s services and experience. *Id.* As well, the “Contact Us” portal on Avra Hospitality’s website has limited interactive content. The “Contact Us” portal was designed for the purpose of allowing hotel owners to provide their contact information if they are interested in discussing the hotel management services offered by Avra Hospitality. Consumers looking to book a hotel room at hotel property managed by Avra Hospitality cannot do so using Avra Hospitality’s website. *Id.* at ¶¶12, 13. They must go through a third-party booking agent, such as

Booking.com., or book directly through the hotel’s website, which is operated by the owner of the hotel, *not* Avra Hospitality. *Id.* Significantly, Mr. Radonovic is unaware of a single instance in which Avra Hospitality has been contacted by a New York consumer as a result of its website or online presence. *Id.* at ¶14.

There are no other facts that support Plaintiff’s allegation that Defendants “do business” or “derive substantial revenue...from services rendered” in New York. Plaintiff concedes that the hotel properties managed by Avra Hospitality are not located in New York. Compl. at ¶¶45, 50 (“[Avra Hospitality] website indicates that the company presently manages three Hilton-branded hotels in Minnesota and an inn located in New London, Connecticut ...[the] Connecticut property Avra Hospitality manages...a property [] is located within easy traveling distance from New York and regularly attracts visitors from New York.). Furthermore, neither Mr. Chafoulias nor Mr. Radovanovic transact business in New York in a manner which would show that they purposefully availed themselves of the privilege of conducting activities within New York under the long-arm statute.

For the above-stated reasons, Defendants simply do not “regularly do[] or solicit[] business, or engage[] in any other persistent course of conduct, or derive[] substantial revenue from goods used or consumed or services rendered” in New York sufficient to satisfy CPLR 302(a)(3).

- ii. Defendants did not reasonably expect, nor should they have reasonably expected, their actions to have consequence in New York.<sup>5</sup>

CPLR §302(a)(3) is not satisfied unless “ ‘[t]he nonresident tortfeasor ... expect[s], or ha[s] reason to expect, that his or her tortious activity in another State will have direct consequences in New York.’ ” *Traver v. Officine Meccaniche Toshci SpA*, 233 F. Supp. 2d 404, 412 (N.D.N.Y. 2002). The constitutional touchstone is whether the nonresident defendant has the nature and quality of the contacts in the forum State, that is, whether the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. *Roxx Allison Ltd. v. Jewelers Inc.*, 385 F. Supp. 3d 377 (S.D.N.Y. 2019).

Under the provision of the New York long-arm statute addressing reasonably expected consequences of a tortious act committed without the state, a court may not assert personal jurisdiction over a nonresident defendant simply because it foresaw the possibility that its product would find its way to New York; ***foreseeability must be coupled with evidence of a purposeful New York affiliation, such as a discernible effort to directly or indirectly serve the New York market.***

*Hein v. Cuprum, S.A. de CV.*, 136 F. Supp. 2d 63 (N.D.N.Y. 2001) (emphasis added).

Here, Plaintiff has not even alleged, much less shown, that Defendants have acted in a manner to “purposefully avail [themselves] of the privilege of conducting activities within [New York].” *Tanner v. Heath Graphics LLC*, No. 115CV0098LEKCFH, 2017 WL 922013, at \*4 (N.D.N.Y. Mar. 8, 2017) (internal citations omitted) (“There must be ‘some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protection of its laws.’”). Plaintiff has not shown that Avra Hospitality nor its officers have made discernible efforts to purposefully target the New York

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<sup>5</sup> Four elements are necessary to a finding of personal jurisdiction under §302(a)(3)(ii): (1) defendant committed tortious act outside state, (2) defendant's tortious activity caused injury to person within state, (3) defendant should reasonably have expected act to have consequences in state, and (4) defendant derives substantial revenue from interstate or international commerce. *Cortlandt Racquet Club, Inc. v. Oy Saunatec, Ltd.*, 978 F. Supp. 520 (S.D.N.Y. 1997). For purposes of this Motion, Defendants concede that the first two elements are satisfied.

market. *See generally* Compl. Plaintiff merely alleges that Avra Hospitality has (1) a “Contact Us” page which has the potential to reach New York viewers; and (2) a Connecticut property “that is located within easy travelling distance from New York and that regularly attracts visitors from New York.” Compl. ¶¶44, 50. Plaintiff also alleges that the hotels managed by Avra Hospitality use a third-party booking agent that is licensed to do business in the State of New York. *Id.* at ¶51. These allegations show no purposeful New York affiliation between Defendants and the State of New York such that Defendants could, or should, reasonably expect their actions to have consequences in New York. Therefore, this prong of CPLR 302(a)(3) is not satisfied.

iii. Defendants do not derive substantial revenue from interstate or international commerce.

In order to establish jurisdiction over Defendants under § 302(a)(3), Plaintiff must establish that Defendants derive substantial revenue outside of the State of Minnesota, either in New York § 302(a)(3)(i), or in interstate commerce generally, § 302(a)(3)(ii). There is no specific dollar threshold at which revenue becomes “substantial”. *Light v. Taylor*, No. 05 CIV. 5003 WHP, 2007 WL 274798, at \*4 (S.D.N.Y. Jan. 29, 2007), *aff’d*, 317 F. App’x 82 (2d Cir. 2009). Instead, courts look either to (1) the percentage of a party’s overall revenue derived from interstate commerce, or (2) to the absolute amount of revenue generated by a party’s activities in interstate commerce as an absolute number. *Ronar, Inc. v. Wallace*, 649 F. Supp. 310, 317 (S.D.N.Y. 1986); *see also Penguin Grp. (USA), Inc. v. Am. Buddha*, No. 09 CIV. 528 RA, 2013 WL 865486, at \*5 (S.D.N.Y. Mar. 7, 2013).

Neither approach is binding on the court, as each case must be decided based on its own set of facts. *See, e.g., Pitbull Prods., Inc. v. Universal Netmedia, Inc.*, No. 07 Civ. 1784(RMB) (GWG), 2008 WL 1700196, at \*8 (S.D.N.Y. Apr. 4, 2008) (finding that \$5,600 in one year or \$8,300 over two years is not substantial revenue in the context of a website that uploads

copyrighted videos); *Robert Diaz Assocs. Enters. v. Elete, Inc.*, No. 03 Civ. 7758(DFE), 2004 WL 1087468, at \*4 (S.D.N.Y. May 14, 2004) (finding \$15,000 earned from one shipment of goods to be substantial when combined with additional revenue derived from online sales in case in which defendant's operations were not local); *Barricade Books, Inc. v. Langberg*, No. 95 Civ. 8906(NRB), 2000 WL 1863764, at \*6 (S .D.N.Y. Dec. 19, 2000) (finding interstate revenue totaling between \$60,000 and \$110,000 per year as insufficient and noting that these amounts are “less than many courts have held is necessary”); *Cable News Network, L.P. v. GoSMS.com, Inc.*, No. 00 Civ. 4812(LMM), 2000 WL 1678039, at \*5 (S.D.N.Y. Nov. 6, 2000) (finding \$60,000 to be substantial, “[a]lthough the amount is not large,” because internet companies might be viewed as successful despite operating at a loss); *Cortlandt Racquet Club, Inc. v. Oy Saunatec, Ltd.*, 978 F.Supp. 520, 527–28 (S.D.N.Y.1997) (finding \$358,000 over a five-year period to be insubstantial and noting that \$9 million is “obviously substantial,” whereas \$9,000 “obviously is not”). Irrespective of the approach chosen, the main concern is the “overall nature of the defendant's business and the extent to which he can fairly be expected to defend lawsuits in foreign forums.” *Pariente*, 1991 WL 19857, at \*6.

For example, in *Cortlandt Racquet Club, Inc. v. Oy Saunatec, Ltd.*, 978 F. Supp. 520 (S.D.N.Y. 1997), the Court held that it did not have *in personam* jurisdiction over foreign manufacturer based on derivation of substantial revenues from state, where manufacturer's total revenues for five years based on commission from sales of its products into state by distributor was \$53,738, but its total sales for relevant period was approximately \$1.251 billion, and thus, New York sales commission accounted for 0.0043% of manufacturer's total sales; even total sales in New York for same period, approximately \$358,000, was only approximately 0.03% of manufacturer's total sales. In *Ronar*, 649 F. Supp. 310 (S.D.N.Y. 1986), consulting fees in the

amount of \$6,500, representing 20% of defendant's total yearly income, were not considered “substantial” revenue from international commerce for purposes of New York long-arm statute where defendant was not a large corporation engaged in millions of dollars of commerce between states and countries. The juxtaposition of the courts’ rulings in these two cases demonstrate how “each case must be decided on its own facts.” *Ronar*, 649 F. Supp. at 317.

Here, the facts show that Defendant Avra Hospitality is primarily a local business, with three of its four properties based in Rochester, Minnesota. *Radovanovic* Dec. at ¶4. More than 95% of Avra’s gross revenues are generated within the State of Minnesota, with the balance earned within the State of Connecticut. *Id.* at ¶10. Avra does not generate any revenue within the State of New York. *Id.* Although Avra Hospitality enters into management contracts with large, corporations such as Hilton, it only operates in two localities, Rochester, Minnesota and New London, Connecticut. *Id.* at ¶4. Thus, Avra Hospitality cannot fairly be expected to defend lawsuits in foreign forums.

**C. Due Process Would be Violated if Jurisdiction Were Asserted against Defendants.**

Inextricably bound with the question of long-arm jurisdiction is the determination of whether due process of law prohibits its exercise. To determine whether conferring jurisdiction comports with due process, New York courts make a two-step inquiry: “(1) minimum contacts must exist between the forum and the defendant, and (2) there must be a showing that [] jurisdiction does not offend traditional notions of fair play and substantial justice.” C.P.L.R. § 302. Due process “requires ‘fair warning that a particular activity may subject [a person] to the jurisdiction of a foreign sovereign.’” *Posven, C.A. v. Liberty Mut. Ins. Co.*, 303 F. Supp. 2d 391, 402 (S.D.N.Y. 2004) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). That “fair warning” provides “a degree of predictability to the legal system that allows potential defendants to structure

their primary conduct with some minimum assurances as to where that conduct will and will not render them liable to suit.” *Id.* Where a particular forum “seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, this ‘fair warning’ requirement is satisfied if the defendant has ‘purposefully directed’ his activities at residents of the forum, and the litigation results from alleged injuries that ‘arise out of or relate to’ those activities.” *Id.* (quoting *Keeton v. Hustler Magazine*, 465 U.S. 770, 774 (1984), and *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 (1984)).

As discussed above, Plaintiff fails to allege *any*—much less ‘sufficient’—‘minimum contacts’ or *any* acts by Defendants that are purposefully directed towards the state of New York. Defendants thus have no ‘fair warning’ that they will be subject to defend a lawsuit in this forum. For these reasons, subjecting Defendants to the jurisdiction of this Court would offend due process.

## II.

### **THIS COURT SHOULD DISMISS THE COMPLAINT DUE TO LACK OF VENUE, OR, IN THE ALTERNATIVE, TRANSFER THE CASE PURSUANT TO 28 U.S.C. §1404(a).**

On a motion to dismiss for improper venue under Federal Rule of Civil Procedure 12(b)(3), the Court applies the same standard of review as it does to a motion to dismiss for lack of personal jurisdiction. *See Gulf Ins. Co. v. Glasbrenner*, 417 F.3d 353, 355 (2d Cir. 2005). The plaintiff bears the burden of establishing that venue is proper. *Id.* Ultimately, “[t]he decision whether to dismiss an action for improper venue is committed to the Court’s sound discretion.” *Blauschild v. Tudor*, 31 F. Supp. 3d 527, 530 (E.D.N.Y. 2014).

As relevant to this case, “[t]he Lanham Act does not have a specific venue provision. Thus, the provisions in 28 U.S.C. § 1391 govern the venue determination.” *Assa Realty LLC v. Sol. Grp. Corp.*, No. 17-CV-0177 (KBF), 2017 WL 2241524, at \*2 (S.D.N.Y. May 22, 2017) (quoting *Lewis v. Madej*, No. 15-CV-2676, 2015 WL 6442255, at \*9 (S.D.N.Y. Oct. 23, 2015)). Under 28 U.S.C.



§1391(b), there are three bases for proper venue where, as here, the plaintiff is alleging that the Court has subject matter jurisdiction under federal question:

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State<sup>6</sup>; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391(b). For the reasons stated below, plaintiff's alleged basis for venue fails.

**A. Venue is Improper as to Avra Hospitality Because This Court Lacks Personal Jurisdiction Over this Entity.**

As set forth in 28 U.S.C. § 1391(c), “a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced.” *Dave Guardala Mouthpieces, Inc. v. Sugals Mouthpieces, Inc.*, 779 F. Supp. 335, 338 (S.D.N.Y. 1991) (“§ 1391(c) now essentially equates jurisdiction with venue for corporate defendants).

In *Dave Guardala Mouthpieces, Inc. v. Sugals Mouthpieces, Inc.*, 779 F. Supp. 335 (S.D.N.Y. 1991), this Court held that New York was a proper venue for an action involving trademark/trademark infringement and unfair competition by saxophone mouthpiece manufacturer and its owner/corporate officer where personal jurisdiction existed over the corporate defendant, and it was shown that the individual defendant targeted the New York market and made an active effort to market infringing mouthpiece there. In that case, plaintiff alleged that the corporate defendant specifically sought to sell his product in New York and made sales presentations in New

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<sup>6</sup> Although not alleged in the Complaint, venue is not proper in this District because all of the Defendants reside in the same State and none of the Defendants reside in this District. Since all Defendants reside in Minnesota, venue would be proper in the District Court of Minnesota, the judicial district where all Defendants' reside. 28 U.S.C. § 1391(b)(1).

York on at least two occasions. In response, the corporate defendant did not deny that his products were sold to New York residents and retailers and also admitted that he advertised his products in national publications and had been in contact with several retailers in the New York area.

In contrast, here, Plaintiff fails to allege that Avra Hospitality or its corporate officers, Mr. Chafoulas and Mr. Radovanovic, are actively targeting the New York market to sell products/services. Plaintiff's sole allegation relating to Avra Hospitality's alleged "solicit[ation] in this District" states that this purported solicitation occurs "with a section on its website called 'Contact Us' for viewers to fill out and submit their name, email address, phone and a message online." Compl. ¶44. There is no allegation that Defendants specifically targeted the New York market. Also, unlike the individual defendant in *Sugal, supra*, Plaintiff has not shown that Mr. Chafoulas and/or Mr. Radovanovic targeted the New York market on Avra Hospitality's behalf. Therefore, as detailed above, since this Court's exercise of personal jurisdiction over Avra Hospitality would be improper, venue is improper as well. *Compare Dave Guardala Mouthpieces*, 779 F. Supp. 335 (S.D.N.Y. 1991) (holding that where personal jurisdiction existed over corporate defendant, venue was also proper in that district).

**B. Venue in this District Fails Because a Substantial Part of the Events Giving Rise to Plaintiff's Claims Occurred Outside of this District.**

Plaintiff alleges that venue is proper under 28 U.S.C. §1391(b)(2). Compl. at ¶11 ("Venue is proper in this District pursuant to 28 U.S.C. §1391 because Defendants' acts are causing confusion of the public and injury to Plaintiff, or a likelihood [of] such confusion and injury, within this District and elsewhere."). Under this Section, a civil action can be brought against an individual in any "judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(b)(2).

When a plaintiff relies on provision of venue statute authorizing venue in a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, ..., to defeat a venue challenge, the court should engage in a two-part inquiry: (1) identify the nature of the claims and the acts or omissions that the plaintiff alleges give rise to those claims, and (2) determine whether a substantial part of those acts or omissions occurred in the district where the suit was filed.

*Blauschild*, 31 F. Supp. 3d 527 (E.D.N.Y. 2014). To establish that venue is proper under this subsection, plaintiff must show that “*significant* events or omissions *material* to the plaintiff’s claim must have occurred in the district in question, even if other material events occurred elsewhere.” *Id.* at 531 (emphasis in original) (citing *Gulf Ins. Co. v. Glasbrenner*, 417 F.3d 353, 356 (2d. Cir. 2005)). To determine whether plaintiff has met this burden, the Court is “required to construe the venue statute strictly[,]” and the Second Circuit has “caution[ed] district courts to take seriously the adjective ‘substantial.’” *Glasbrenner*, 417 F.3d at 357.

Here, with respect to the first prong of the inquiry – “the nature of the claims and the acts or omissions that the plaintiff alleges give rise to those claims” – the causes of action set forth in Plaintiff’s Complaint center around Defendants alleged acts of infringement and unfair competition.<sup>7</sup> To determine the second prong of the inquiry – “whether a substantial part of those acts or omissions occurred in the district where the suit was filed” – the court must focus on where the *defendant’s* acts or omissions occurred.” *Blauschild*, 31 F. Supp. 3d at 532 (E.D.N.Y. 2014) (quoting *Prospect Capital Corp. v. Bender*, No. 09–CV–826, 2009 WL 4907121, at \*3 (S.D.N.Y. Dec. 21, 2009)) (emphasis in original). While Plaintiff alleges that it has suffered harm in this District, “the situs of the alleged harm to the plaintiff is [only] a factor in deciding whether a substantial part of the events or omissions giving rise to a claim occurred in a particular district.” *Blauschild*, 31 F. Supp. 3d at 532 (E.D.N.Y. 2014) (quoting *Fedele v. Harris*, 18 F.Supp.3d 309,

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<sup>7</sup> These alleged acts occurred in Minnesota, and Plaintiff does not allege otherwise. *See generally* Compl.

317, No. 13-cv-6368, 2014 WL 1870840, at \*7 (E.D.N.Y. May 9, 2014)). The Second Circuit's directive for venue analysis focuses on the relevant activities of the defendants because

“venue determinations based solely on the location of the harm is contrary to Congress’s intent in drafting section 1391(b)...and [a]dhering to this rule comports with the purpose of the venue statute to “protect[ ] a defendant from the inconvenience of having to defend an action in a trial court that is either remote from the defendant's residence or from the place where the acts underlying the controversy occurred.”

*Id.* at 532-533 (citation omitted). In *Blauschild, supra*, the plaintiff argued that venue was proper where the injury was caused. Rejecting this argument, the court stated that “[p]laintiff’s argument ... is more akin to a minimum contacts test for purposes of personal jurisdiction...[and] [a]s the Second Circuit has made clear, “[i]t would be error ... to treat the venue statute's ‘substantial part’ test as mirroring the minimum contacts test employed in personal jurisdiction inquiries.” *Id. Gulf Ins. Co.*, 417 F.3d at 357 (citations omitted).

Thus, although Plaintiff’s purported injuries occurred in this District and elsewhere, *to wit* its restaurant located in Beverly Hills, California, the appropriate district to adjudicate this action is the district where the Defendants’ wrongful acts of alleged infringement occurred. Significantly, Plaintiff fails to allege that Defendants performed any wrongful acts or omissions in New York. *See generally* Compl. Conversely, Plaintiff alleges that “both Chafoulias and Radovanovic have business addresses in Rochester, MN,” and “Defendants have committed infringing acts *outside of* New York.” (emphasis added) Compl. at ¶¶7, 10. It appears that Plaintiff’s sole basis for filing suit in New York is the fact that Plaintiff is domiciled in this District and its attorneys are located in this District. But convenience to the plaintiff is not a valid basis for determining venue.

Moreover, to establish venue for trademark infringement actions, the plaintiff must show "either substantial sales of the infringing product in the district or intentional targeting of the infringing product into the district." *Detroit Coffee Co., LLC v. Soup for You, LLC*, No. 16-cv-

9875 (JPO), 2018 WL 941747, at \*2 (S.D.N.Y. Feb. 16, 2018). Here, there are no sales of the allegedly infringing services in the district nor any intentional targeting of any sales into the district. The mere fact that Avra Hospitality has a website that is accessible to residents in the district fails to support the intentional targeting required for proper venue. At a minimum, Plaintiff must show that Defendants took some active step to advertise, market, or otherwise solicit business in the district. *See, e.g., French Transit, Ltd. v. Modern Coupon Sys., Inc.*, 858 F. Supp. 22, 26 (S.D.N.Y. 1994) (holding that a substantial part of the events giving rise to trademark infringement occurs when "a defendant targets the [d]istrict by advertising and actively pursues efforts to market the product by making sales presentations . . . in the [d]istrict").

In *Detroit Coffee Co. v. Soup for You, LLC*, 16-CV-9875 (JPO), at \*5 (S.D.N.Y. Feb. 16, 2018), this Court granted the defendant's motion to dismiss for improper venue where there was no evidence that defendant actively marketed or targeted sales in New York. In that case, this Court found that defendant's website alone was insufficient to target the Southern District of New York where the website merely allowed users to order coffee to be shipped to any of the fifty states. *Id.* at \*6-7. In reaching this conclusion, the Court noted that the defendant had not engaged in any activities to target New York as it did not maintain a business address or telephone number in the district, did not advertise in the district, nor otherwise target sales in New York. *Id.* Similarly, in the instant case, Defendants have no business address or telephone number in the district, nor have they marketed or targeted any sales in the district through any media, including the Avra Hospitality website. Radonovic Dec. at ¶¶5,6,7,11,16. Therefore, Avra Hospitality's website alone is not sufficiently targeted at the district to support venue.

Since the substantial part of the alleged events pertinent to Plaintiff's claims took place in Rochester, Minnesota—not New York—it would be improper for this Court to find that venue is proper in this District.

**C. In the Alternative, this Court Ought to Transfer the Action to the United States District Court of Minnesota under 28 U.S.C. §1404.**

As demonstrated above, the Court should dismiss this action for lack of personal jurisdiction and improper venue. But, if this Court were to find otherwise, Defendants respectfully request that the Court transfer this action to the United States District Court of Minnesota. *Fedele*, 18 F. Supp. 3d at 319 (“Whether dismissal or transfer is appropriate lies within the sound discretion of the district court.”) (citing *Minnette v. Time Warner*, 997 F.2d 1023, 1026 (2d. Cir. 1993)).

Under 28 U.S.C. §1404(a), “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.” Further “[w]hether transfer is appropriate lies within the sound discretion of the district court.” *Blauschild*, 31 F. Supp. 3d at 533. Courts apply a two-part test to determine whether transfer is appropriate: (1) whether the transferee district would have personal jurisdiction over the defendants; and (2) whether the transfer is in the interest of justice and the convenience of the parties and witnesses. *Dickerson v. Novartis Corp.*, 315 F.R.D. 18, 26 (S.D.N.Y. 2016) (citing *In Re CenturyLink, Inc. Sec. Litig.*, 2014 WL 1089116, at \*1 (S.D.N.Y. 2014)). The first part of the test is met because Defendants all reside and conduct business in Minnesota. Compl. at ¶7; Chafoulias Dec. at ¶¶3, 9; Radovanovic Dec. at ¶¶15, 16. Therefore, the United States District Court of Minnesota has personal jurisdiction. As for the second part of the test, courts consider the following nine factors when determining if an action should be transferred:

(1) the convenience of the witnesses; (2) the convenience of the parties; (3) the location of relevant documents and the relative ease of access to sources of proof; (4) the locus of operative facts; (5) the availability of process to compel the attendance of unwilling witnesses; (6) the relative means of the parties; (7) the forum's familiarity with the governing law; (8) the weight accorded the plaintiff's choice of forum; and (9) trial efficiency and the interests of justice.

*Dickerson*, 315 F.R.D. at 27 (citing *Steck v. Santander Consumer USA Holdings, Inc.*, 2015 WL 3767445, at \*2 (S.D.N.Y. 2015)). These nine factors weigh in favor of transferring this action to the United States District Court District of Minnesota.

First, the vast majority of the witnesses in this action reside in Minnesota. Defendants, including all of Defendants' corporate employees who have knowledge regarding the alleged infringement and could potentially be deposed and/or be called to trial in this action, reside in Minnesota. Radonovic Dec. ¶¶6,7. Second, nearly all of the documents related to Plaintiff's claims will be located in Minnesota, such as document pertaining to the creation, promotion and use of the AVRA HOSPITALITY Mark. *Capitol Records*, 611 F.Supp. 2d at 368 ("[I]n infringement cases, it makes sense that the bulk of the relevant evidence usually comes from the accused infringer and in such cases this factor weighs in favor of transfer to the place where the defendant's documents are kept.") (quotations omitted). Third, Minnesota is the location of nearly all of the operative facts in Plaintiff's Complaint. *Dickerson*, 315 F.R.D. at 30 ("The location of operative facts is a primary factor in determining a § 1404(a) motion to transfer.") (quoting *Rosen v. Ritz-Carlton Hotel Co. LLC*, 2015 WL 64736, at \*4 (S.D.N.Y. 2015)). The purported infringing conduct, including the creation, development and use of the AVRA HOSPITALITY Mark by Defendants, could only have occurred in Minnesota, where Avra Hospitality's officers work and reside. Fourth, "the majority of [p]laintiff's claims raise questions of federal law, which either forum is equally capable of deciding." *Dickerson*, 315 F.R.D. at 32 (citing *Mattel, Inc. v. Procount Bus. Servs.*, 2004 WL 502190, at \*4 (S.D.N.Y. 2004) ("This case raises questions of federal law.

Therefore, either forum is equally capable of hearing and deciding those questions.”). The crux of Plaintiff’s Complaint is for trademark infringement, which arises under federal law, and the District Court of Minnesota is more than capable of disposing of such claims. Fifth, since all three Defendants and all of Defendants’ witnesses reside in Minnesota, Chafoulias Dec. at ¶9; Radonovic Dec. ¶¶6,7, a trial conducted in Minnesota would be more efficient and would serve the interests of justice, including the interest of judicial economy.

Therefore, because this action should have been initiated in the District Court of Minnesota for the above reasons, Defendants respectfully request, in the alternative, that this Court transfer this action to the U.S. District Court of Minnesota.

### **CONCLUSION**

There is no legal or factual basis for this Court to exert personal jurisdiction over Defendants because they lack any relationship or contact whatsoever with the State of New York. To subject Defendants to a lawsuit in New York when it has absolutely no contact with the state would violate constitutional Due Process and thus Defendants respectfully request dismissal of the complaint on this basis. Defendants respectfully request that this Court issue an Order dismissing Plaintiff’s complaint on the basis of lack of jurisdiction and improper venue, together with such other further relief as this Court deems just and proper.

This 12<sup>th</sup> day of September, 2019.

**STOKES WAGNER, ALC**

By: /s/ Hayden Pace

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*Attorneys for Defendants*



**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing “Memorandum of Law in Support of Defendants’ Motion to Dismiss Plaintiff’s Complaint” with the Clerk of the Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following counsel of record:

Joshua Avram Weigensberg, Esq.  
Ryan Klarberg, Esq.  
William J. Thomashower, Esq.  
**PRYOR CASHMAN LLP**  
7 Times Square  
New York, New York 10036

This 12<sup>th</sup> day of September, 2019.

**STOKES WAGNER, ALC**

By: /s/ Hayden Pace  
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(607) 257-5165 – Telephone

*Attorneys for Defendants*

**DECLARATION OF MIKI RADOVANOVIC**

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1.

My name is Miki Radovanovic. I am above the age of eighteen and competent in all respects to give this Declaration. The facts stated herein are true and based on my personal knowledge.

2.

I am the Chief Operating Officer of Avra Hospitality, LLC ("Avra"). I am not a member of Avra nor do I hold an ownership interest in the company.

3.

Avra is a hospitality management company. As such, Avra provides hotel owners with hotel management services, including operational services, human resource services, revenue enhancement, bookkeeping services, and marketing services, among others.

4.

Currently, Avra manages four hotels – three Hilton-branded hotels located in Rochester, Minnesota, and the small "Inn at Harbor Hill" located in New London, Connecticut. Avra does not hold an ownership interest in any of these four hotels.

5.

Avra has never managed, and is not currently managing, any hotels located anywhere within the State New York.

6.

Avra does not own or maintain any offices in New York, and none of Avra's officers, agents or employees are based in New York or reside in New York. Avra does not have any assets

located in New York and does not transact business in New York.

7.

Avra's corporate office and principal place of business is located in Rochester, Minnesota. All of Avra's employees, with the limited exception of those employees assigned to work at the "Inn of Harbor Hill" in Connecticut, are based and work in Rochester, Minnesota.

8.

I was never personally served with the Complaint and Summons in the above-styled lawsuit. These papers appear to have been handed to Avra's Vice President of Revenue, Maria Cvetkovic. Ms. Cvetkovic is not Avra's registered agent. More importantly, I have never authorized Ms. Cvetkovic to accept service on my behalf.

9.

I, personally, do not have any business dealings in New York. I do not own, lease or rent any real or personal property (residential or commercial) located in New York. I do not own any assets located in New York nor do I maintain any bank accounts in New York. I do not file taxes in New York, hold a New York driver's license, nor am I registered to vote in New York.

10.

More than 95% of Avra's gross revenues are generated within the State of Minnesota, with the balance earned within the State of Connecticut. Avra does not generate any revenue within the State of New York.

11.

Avra is a business-to-business company, and does not engage in sales directly with consumers. Instead, consumers interact directly with Avra's clients (i.e., the owners of the hotels) and book rooms through websites maintained by those hotel owners, hotel brands and certain third-



party booking agents – notably, not Avra. To be clear, Avra has not and does not engage in any sales transactions with consumers located in New York.

12.

Avra's hospitality management service website launched in October 2017. Avra's website is **not** configured to process, transact or engage in any sales, and a consumer is **not** able to book rooms in any of hotels managed by Avra using that website. Instead, the website is solely informational in nature – and is simply provided so that owners of hotels may learn about Avra's services and experience.

13.

There is a "Career Opportunities" tab on Avra's website, which allows individuals interested in working at an Avra-managed hotel to view open positions. There is also a "Contact Us" portal on Avra's website that was designed for the purpose of allowing hotel owners to provide us their contact information if they are interested in discussing our hotel management services. If someone were to enter information using this portal, an email would be sent to myself or Michelle Milde, our Marketing Manager. But, other than the initial submission that was sent by us internally to test the portal's operability when the website was launched, we have not received any other submissions through the "Contact Us" portal.

14.

To date, I am unaware of a single instance in which Avra has been contacted by a New York consumer as a result of Avra's website or online presence.

15.

My primary residence is located in Rochester, Minnesota.

16.

Until recently, my personal office for Avra was located at 10 East Center St, Rochester, Minnesota 55904. On or about September 3, my office was relocated to 150 S. Broadway, Rochester, Minnesota 55904. When Ms. Cvetkovic was served with this lawsuit on or about August 22, 2019, neither myself nor Mr. Chafoulias maintained offices at the location where she was served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12 day of September, 2019.

  
MIKI RADOVANOVIC

**DECLARATION OF ANDY CHAFOULIAS**

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1.

My name is Andy Chafoulis. I am above the age of eighteen and competent in all respects to give this Declaration. The facts stated herein are true and based on my personal knowledge.

2.

I am the Chief Executive Officer of Avra Hospitality, LLC ("Avra Hospitality").

3.

Until September 6, 2019, my personal office in connection with Avra Hospitality was located at 30 Third Street, SE, Suite 600, Rochester, Minnesota 55904. As of September 6, 2019, my personal office is located at 150 S. Broadway Rochester, Minnesota 55904.

4.

I, personally, do not conduct or solicit any business in New York on behalf Avra Hospitality. I, personally, have not conducted sales presentations there nor have I personally taken any other specific actions to direct my marketing/advertising efforts to the New York market.

5.

I do not own, lease or rent any real or personal property (residential or commercial) located in New York. I do not own any assets located in New York nor do I maintain any bank accounts (personal or otherwise) in New York. I do not file taxes in New York, hold a New York driver's license, nor am I registered to vote in New York. None of my Avra Hospitality-related activities are conducted in New York.

6.

The Avra Hospitality name was chosen because of my Greek heritage. "Avra" is a Greek word that in English translates to "breeze." My decision to use the word "Avra" to brand my company had nothing to do with Avra restaurants.

7.

I was never personally served with the Complaint and Summons in the above-styled lawsuit. I was actually in Greece when service occurred. The court papers were handed to our Vice President of Revenue, Marija Cvetkovic.

8.

Ms. Cvetkovic is not Avra's registered agent, and I have never authorized her to accept service on my behalf.

9.

My primary residence is located in Rochester, Minnesota.

10.

When Avra Hospitality received the initial demand letter in connection with this lawsuit, it immediately sought the advice and guidance of counsel.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this \_\_\_ day of September, 2019.

  
\_\_\_\_\_  
ANDY CHAFOULIAS

# EXHIBIT U



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

**48<sup>TH</sup> RESTAURANT ASSOCIATES LLC,**

Opposer,

v.

**AVRA HOSPITALITY LLC,**

Applicant.

**Opposition No. 91246895**

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**APPLICANT AVRA HOSPITALITY LLC'S RESPONSE  
TO OPPOSER'S MOTION TO SUSPEND**

Applicant Avra Hospitality LLC ("Applicant") submits this response to Opposer 48<sup>th</sup> Restaurant Associates LLC's ("Opposer") Motion to Suspend this opposition ("Opposition") based on civil action no. 1:19-cv-07708-VSB ("Civil Action") in the U.S. District Court for the Southern District of New York ("District Court") filed by the Opposer on August 16, 2019. Applicant filed a Motion to Dismiss the Civil Action on September 12, 2019. A copy of Applicant's Motion to Dismiss and accompanying brief is attached as **Exhibit A**. Applicant respectfully requests that the Board defer ruling on Opposer's Motion to Suspend until after the District Court has an opportunity to rule on Applicant's Motion to Dismiss. Deferring a ruling on the Opposer's Motion to Suspend is appropriate because: i) the District Court has not yet ruled on the Motion to Dismiss and the Board should have the benefit of its decision; and ii) the Opposer has engaged in delay tactics and gamesmanship in this Opposition by abusing the discovery process to support its claims in the Civil Action.

**I. Deferring a Ruling on Opposer's Motion to Suspend In View of Applicant's Motion to Dismiss the Civil Action Is Appropriate.**

A suspension request is not granted as a matter of right. Rather, § 510.02(a) of Trademark Trial and Appeal Board Manual of Procedure ("TBMP") provides that the Board has discretion to suspend an opposition proceeding when civil litigation is *pending* between the parties ("Suspension of a Board proceeding pending the final determination of another proceeding is solely within the discretion of the Board"); *see also Martin Beverage Co., Inc. v. Colita Beverage Corp.*, 169 USPQ 568, 570 (TTAB 1971) (rejecting the argument that the Board automatically suspends proceedings when civil litigation is pending between the parties as "manifestly incorrect"). Here, the District Court's ruling on the Applicant's Motion to Dismiss is dispositive as to whether the newly-filed Civil Action is even a viable, *pending* case between the parties. Given that the District Court has not yet ruled on the Motion to Dismiss, ruling on the Opposer's Motion to Suspend prior to the District Court's decision would be premature. Finally, given the late stage of the Opposition, which is nearing the end of discovery, suspending the ruling on the Motion to Suspend will serve the interest of judicial economy.

**II. Suspending the Opposition at this Stage Gives Opposer an Unfair Advantage in the Civil Case.**

In addition, Applicant respectfully requests that the Board defer ruling on Opposer's Motion to Suspend until after the District Court rules on Applicant's Motion to Dismiss based on the Opposer's gamesmanship in this Opposition. In particular, the Opposer served its discovery requests on the Applicant on June 14, 2019, and the Applicant served its discovery requests on the Opposer on July 17, 2019. Applicant responded to Opposer's discovery requests in a timely manner. However, Opposer first engaged in delay tactics to postpone responding to Applicant's discovery requests. *See Exhibit B*; emails from Opposer's counsel indicating that the Opposer

would provide responses to Applicant's document requests and interrogatories on August 23, 2019 and August 30, 2019, respectively. Then, two (2) days after receiving Applicant's discovery responses, in a cunning act of gamesmanship, Opposer filed the Civil Action without providing a single document in response to Applicant's documents requests or responses to Applicant's interrogatories. As a result, the Opposer gained an unfair advantage in the Civil Action by obtaining Applicant's discovery responses, while the Applicant essentially has to "start over" in District Court without the benefit of any of the Opposer's discovery responses. Accordingly, Applicant respectfully requests that the Board defer ruling on Opposer's Motion to Suspend until after the District Court rules on the Motion to Dismiss or at least require that the Opposer respond to Applicant's interrogatories and document requests in compliance with the Board's discovery requirements. *See Exhibit C*, Applicant's Motion to Compel Opposer's Discovery Responses; filed separately. Doing so will serve the interests of judicial fairness by evening the playing field for Applicant in the Civil Action.

### **III. Conclusion**

For the reasons discussed above, suspending the Opposition proceeding at this juncture is inappropriate. Under these circumstances, the Board should defer ruling on Opposer's Motion to Suspend until the District Court has ruled on Applicant's Motion to Dismiss the Civil Action. In addition, and/or in the alternative, the Board should exercise its discretion and at least require that the Opposer produce documents and respond to Applicant's interrogatories to even the playing field for the Applicant in the Civil Action.

{Signature on Following Page}

Dated: September 17,2019

**Sperry IP Law d/b/a Vivid IP**

**/Marcy L. Sperry/**

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*Attorneys for Applicant*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of September, 2019, APPLICANT AVRA HOSPITALITY LLC'S RESPOSE TO OPPOSER'S MOTION TO SUSPEND was served upon the Opposer via email as follows:

[wthomashower@pryorcashman.com](mailto:wthomashower@pryorcashman.com),  
[kholder@pryorcashman.com](mailto:kholder@pryorcashman.com),  
[tmdocketing@pryorcashman.com](mailto:tmdocketing@pryorcashman.com)

/Marcy L. Sperry/  
Attorney for Applicant

# **EXHIBIT V**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application  
Serial No. 87/849,410 for the mark AVRA HOSPITALITY & Design

**48<sup>TH</sup> RESTAURANT ASSOCIATES LLC,**

Opposer,

v.

**AVRA HOSPITALITY LLC,**

Applicant.

Opposition No. 91246895

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**DECLARATION OF MARCY L. SPERRY, ESQ.**

I, Marcy L. Sperry, Esq., declare as follows:

1. I represent Applicant Avra Hospitality LLC in this matter.
2. I have knowledge of the facts set forth herein and in Applicant's Motion to Compel.
3. Opposer's First Set of Requests for the Production of Documents and First Set of Interrogatories were served on Applicant on June 14, 2019.
4. Applicant served on Opposer its First Set of Requests for the Production of Documents and First Set of Interrogatories on June 17, 2019.
5. On July 10, 2019, the parties agreed to a two (2) week extension, where Applicant's new deadline to respond to Opposer's Discovery Requests was July 28, 2019 and Opposer's new deadline to respond to Applicant's Discovery Requests was July 31, 2019. Since Applicant's new deadline fell on a Sunday, Opposer agreed that Applicant could serve its responses to Opposer's Discovery Requests the next business day, on Monday, July 29, 2019.

6. On July 29, 2019, Applicant timely served its responses to Opposer's Discovery Requests, which stated that the Applicant would provide all non-privileged documents responsive to Opposer's Document Requests on August 14, 2019.

7. On July 29, 2019, two (2) days before Opposer's new deadline to respond to Applicant's Discovery Requests, Opposer alleged that Applicant's First Set of Interrogatories exceeded the interrogatory limit and requested that the Applicant re-serve its First Set of Interrogatories.

8. In an effort to resolve any discovery issues, Applicant revised its First Set of Interrogatories ("Revised Interrogatories" or "Applicant's Revised Interrogatories") and served them on Opposer on July 31, 2019. Since Applicant's Revised Interrogatories were fully encompassed within Applicant's First Set of Interrogatories and did not require any additional review by the Opposer, Applicant requested that the Opposer respond to Applicant's Revised Interrogatories by August 7, 2019.

9. On July 31, 2019, Opposer served its responses to Applicant's Document Requests, but did not produce any documents or specify a date of production pursuant to Federal Rule of Civil Procedure ("FRCP") 34(b)(2)(B).

10. Opposer failed to serve responses to Applicant's Revised Interrogatories by Applicant's requested deadline. Accordingly, on August 11, 2019, Applicant's counsel sent an email to Opposer's counsel requesting that the Opposer respond to Applicant's Revised Interrogatories by August 14, 2019.

11. In an effort to resolve this discovery dispute, on August 13, 2019, Applicant's counsel left a voicemail for Opposer's counsel and also sent emails to Opposer's counsel requesting that the Opposer serve its responses to Applicant's Revised Interrogatories and



specify a date that it will produce documents responsive to Applicant's Document Requests as required by FRCP 34(b)(2)(B).

12. On August 13, 2019, Opposer's counsel sent an email indicating that the Opposer would provide responses to Applicant's Revised Interrogatories before August 30, 2019.

13. On August 14, 2019, Applicant produced documents responsive to Opposer's Document Requests. On the same day, Opposer's counsel sent an email indicating that the Opposer would produce documents responsive to Applicant's Document Requests on or before August 23, 2019.

14. On August 16, 2019, two (2) days after receiving Applicant's documents in response to Opposer's Document Requests, Opposer filed a civil action ("Civil Action") in the U.S. District Court for the Southern District of New York ("District Court") against the Applicant for trademark infringement.

15. On August 22, 2019, Opposer's counsel sent an email to Applicant's counsel requesting that the Applicant consent to a stay of this Opposition.

16. On August 26, 2019, Applicant's counsel sent an email indicating that the Applicant would consent to stay this Opposition if the Opposer would produce documents responsive to Applicant's Document Requests and provide responses to Applicant's Revised Interrogatories by August 30, 2019.

17. On August 28, 2019, Opposer's counsel sent an email to Applicant's counsel stating: "it makes no sense to condition a stay on discovery in the proceeding which is about to be stayed and likely mooted."

18. On September 3, 2019, Opposer filed a motion to suspend this Opposition.

19. On September 12, 2019, Applicant filed a Motion to Dismiss the Civil Action for lack of personal jurisdiction and improper venue.

20. On September 17, 2019, Applicant filed a response to Opposer's motion to suspend this Opposition requesting that the Board defer ruling on Opposer's motion to suspend until after the District Court rules on Applicant's Motion to Dismiss.

21. To date, Applicant has not received any document production from the Opposer in response to Applicant's Document Requests or any response to Applicant's Revised Interrogatories.

22. Pursuant to 37 C.F.R. § 2.120(e) and TBMP § 523.02, I have made a good faith effort to resolve the issues presented by the Opposer's lack of compliance with its discovery obligations in this opposition.

I declare under penalty of Perjury that all of the foregoing is true and correct.

Respectfully submitted September 17, 2019.

/Marcy L. Sperry/  
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